TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 501.

HARRY H. CHRISTMAS, MARY E. CHRISTMAS, AND RICHARD CHRISTMAS, APPELLANTS,

vs.

W. A. GAINES AND H. S. JULIAN, EXECUTORS OF JOHN W. RUSSELL, DECEASED, PHILIP SWIGERT, E. H. WATSON, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 25, 1870.

9

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1 No. 86.

JOHN W. RUSSELL ET AL, COMPLAINANTS,
vs.
WILLIE LYONS, WILLIAM YERGER, FULTON Anderson, adm'r of Warren P. Anderson, dec'd, and John D. Freeman, defendants.
} No. 86, new series.—In equity.

Pleas before the Honorable Robert A. Hill, district judge of the United States for the districts of Mississippi, at a special term of the circuti court of the United States in and for the fifth circuit and southern district of Mississippi, held at Jackson, in said district, in the court-room of said court, on the fourth Monday and 24th day of January, in the year of our Lord one thousand eight hundred and seventy, pursuant to an order of said court duly made and entered of record at the November term thereof, in the year of our Lord one thousand eight hundred and sixty-nine.

Be it remembered that heretofore, to wit, on the sixth day of April, A. D. 1869, the complainants, by their solicitors, Messrs. Harris and Withers, filed their bill of complaint herein against Willie Lyons,
2 William Yerger, Fulton Anderson, adm'r of Warren P. Anderson, dec'd, and John D. Freeman, defendants, in the words and figures following, to wit:

UNITED STATES OF AMERICA:

In the circuit court of the United States, southern district of Mississippi.

To the judges of said court:

John W. Russell, Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas H. Lindsey, in his own right and in his right as administrator of Churchill Samuel, deceased, citizens of the State of Kentucky, bring this bill against Wiley Lyons, William Yerger, and Fulton Anderson, adminstrator of Warren P. Anderson, deceased, and John D. Freeman, citizens of the State of Mississippi, residing in the district aforesaid, and Richard Christmas, Mary E. Christmas, H. H. Christmas, citizens of the State of Kentucky.

And thereupon your orators complain that, on the 25th of May, 1860, the said complainant John W. Russell, for the use of himself and the other complainants in this suit, recovered a judgment in the circuit of the United States for the district aforesaid against one Richard Christmas, then a citizen of the State of Mississippi, but who has since become, and is now, a citizen of the State of Kentucky, in an
3 action of debt, for the sum of $5,634 13 for the debt, and $6,521 35 for damages, with interest on said sums at the rate of six per centum per annum until paid, together with costs. To this judgment the said Richard Christmas sued out his writ of error to the Supreme Court of the United States, and entered into bond in double the amount of such judgment, payable to the plaintiff therein, with the said William Yerger, and Warren P. Anderson, who, since the execution of said bond, has departed this life, as his sureties, to obtain supersedeas of execution, conditioned to prosecute the said writ of error with effect, and, failing therein, to pay and satisfy the said judgment and costs; that on the said writ of error so sued out as aforesaid such proceedings were had in the said Supreme Court of the United States that, at the December

term thereof, 1866, the said cause coming on to be heard and finally determined, the said judgment was affirmed, with interest at the same rate as aforesaid, and a judgment rendered for the sum of $210 30 for costs against said Christmas, which will more distinctly appear by reference to the mandate of said Supreme Court in the said cause, a copy
4 of which, duly certified, is herewith filed, and prayed to be taken as part of this bill, as Exhibit (A).

Your orators further state that the final record of said cause in the circuit court aforesaid, and the original papers and files of the cause, were lost or destroyed during the late occupation of the city of Jackson by the Army of the United States, so that they cannot obtain a transcript thereof, there being but the entry on the minutes of said court of the verdict in said cause and the judgment thereon.

Your orators further state that, by means of the affirmance of said judgment, the liability of the sureties on said writ of error bond became fixed, and the said judgment final and conclusive; and that the same is unsatisfied.

Further complaining, your orators state that, pending the writ of error aforesaid, the said Richard Christmas left the United States, and sojourned temporarily first in England, and afterwards in France, and, as his pecuniary affairs had been much deranged by the war which had intervened in this country, and his attention being drawn to the loss likely to fall on his said surety William Yerger, and on the estate
5 of his said surety W. P. Anderson, unless he provided indemnity to them, the said Christmas entered into correspondence by letters with the said William Yerger touching said indemnity, in the course of which the said Christmas stated that he held a note on the said Wiley Lyons (dated, as appears, about the 30th of Nov., 1859) for $16,666 60, secured by a special mortgage on land, part of the purchase-money of which it was given to secure, and bearing interest at 8 per cent.; and further stated that said note was in the hands of a friend in New York by the name of Brennan; and, with a view to indemnify the said Yerger and the estate of the said W. P. Anderson as aforesaid, he, the said Richard Christmas, assigned and pledged the said note to the said Yerger in writing for the purpose aforesaid, declaring said pledge to be for the payment of the debt of the complainants hereinbefore set forth, with a view to save harmless the said Yerger and the estate of the said Anderson; that this pledge and assignment were in writing, embodied in letters of the said Richard Christmas to the said Yerger, written and signed by him in the fall of 1865 and the winter and spring of 1866; that in said letters the said Christmus used, with other expres-
6 sions of like import, the following: "I have ever held the Lyon note (meaning the note above described) sacred for the payment of this debt, (meaning the debt due complainants.) I will hold this note, $16,666 60 and many years interest at 8 per cent., always subject to this debt, provided the judgment is confirmed," meaning the debt and judgment of complainants before described.

Your orators further state that the note aforesaid was, at the date of the letters aforesaid which were written from abroad, in the hands of a friend of said Christmas in the city of New York, and the said Christmas excused himself for not sending said note to the said Yerger by mail because, being payable to bearer, it might be lost and occasion trouble; that it was the distinct purpose of the said Christmas to pledge the said note to the said Yerger that he and the said estate of W. P. Anderson might be saved from loss; and the pledge was so made by him and accepted by the said Yerger, and action by the latter, so far as to

enter upon negotiations with said Lyons, with a view to the payment by him of the note aforesaid, as the means of paying the debt of complainants, and thus relieving himself and the estate of the said Anderson from their liability aforesaid; that these negotiations were interrupted by the said Christmas afterwards, but only to enable him to compromise and reduce the debt to complainants, and to this end he counseled and enjoined upon the said Yerger caution and silence, least the complainants should become apprised of the existence and situation of the said note of the said Wiley Lyon.

7

Your orators further state that the pledging and setting apart of the note aforesaid for the benefit of the sureties aforesaid was recognized and declared in various forms in divers letters of the said Christmas to the said defendant William Yerger, which letters are in the possession of the said Yerger; that the said Christmas stated that he had directed said note to be converted into money for the purpose of paying the debt due complainants; and, if not sold on his return to this country, he would send it to said Yerger.

Your orators further state that said Christmas returned to the United States in the spring of 1866, and fixed his residence in the State of Kentucky; that, on reaching New York, and finding the note had not been sold, (he having countermanded the sale as he alleged,) instead of sending the note to the said Yerger, the said Christmas transferred the same to his son, Harry H. Christmas, also a citizen of Kentucky, but assured the said Yerger he should not be prejudiced by said transfer, and that he had not forgotten his obligation to him.

8

Your orators state that this transfer was on a pretended consideration, without any claim or demand had or made by the son, the said Christmas pretending that he had incurred a debt to his said son on account of certain property, the title to which had been, many years before, by a colorable arrangement to defeat creditors, conveyed to his said son, then of very tender years; that the debt was not claimed by the son, but that said Christmas, as your orators believe and charge, devised this method to cover the debt due from Lyon, and place it beyond the reach of creditors, and, notwithstanding said pretended transfer, the said Richard Christmas has not ceased to exercise control and direction of the said note; that, in order more effectually to cover said note, and to divert it from the payment of his debts, the said Richard Christmas procured a settlement with said Lyon, in the name of his said son, by which, in June, 1866, the said Lyon gave his two notes for the sum of $8,339 90 each, payable to said Harry H. Christmas or order, the one payable Dec'r 1st, 1866, the other payable Feb'y 1st, 1868, the said Lyon consenting in writing that the said two notes, being in renewal of the note before mentioned, which was secured by a special mortgage on lands in Bolivar County, Mississippi, should rest on the same security; that, at the date of this settlement, a larger sum was due from said Lyon, but your orators state, on information, that a portion of the original note had been assigned to another party or parties, and that said Lyon, in ignorance of the pledge of said note as aforesaid, had paid or accounted for the balance due; or it may be that the sum due from said Lyon was reduced in a compromise with him to the aggregate of the said two notes.

9

Your orators further charge that the said Yerger has never ceased to regard the said note or debt of the said Lyon as an equitable pledge for the payment of the debt due the complainants; that throughout these proceedings the said Christmas held out the idea that he was by this contrivance placing the debt in such a shape that he could compel or

constrain the complainants to compromise; that said Yerger, so far from assenting to the transfer of said claim to said Harry H. Christmas, complained of the same, as your orators are informed.

10 Your orators further state and charge that in some transaction or dealing with the firm of Payne, Huntington & Co., of New Orleans, by the said Richard Christmas and his son, the first of said notes for $8,339 90 was deposited with said firm as a pledge for advances or loans, and while in the hands of said firm the said Lyon paid to them $400 or thereabouts on said note; that afterwards the said Richard Christmas, through John D. Freeman, esqr., his agent and attorney in this State, caused suits at law to be instituted in the name of Harry H. Christmas against said Lyon in the circuit court of the United States for the district aforesaid, one in the name of H. H. Christmas for the use of said Payne, Huntington & Co., on the note due Dec'r 1st, 1866, and one in the name of the said H. H. Christmas on the note due the 1st of February, 1868, in which last suit judgment was rendered in said court in favor of said H. H. Christmas against said Lyon for $8,868, Nov. the 13th, 1868, on which judgment execution has been issued; that the other suit is still pending on an application, as it appears, by Mary E. Christmas, wife of said Richard, to be substituted as usee in the suit in the place of Payne, Huntington & Co.; that about the same time, by the same means and agency, a suit in

11 equity was brought in the same court by Payne, Huntington & Co., Mary E., Richard, and H. H. Christmas against the said Lyon, founded on the mortgage aforesaid, and to foreclose the same, on the two notes aforesaid, in which it is alleged by the complainants that the first of said notes is due to Payne, Huntington & Co., and the other to H. H. Christmas, and although it is stated that the said mortgage was for the benefit as well of the said Mary E. as for the said Richard Christmas, yet it is plain that no title to the notes aforesaid was in the said Mary, she having joined in the deed merely to relinquish dower, while the notes were made payable to said Richard alone. The original bill in said cause having by the prayer thereof asked that the money due from said Lyon be paid to said Payne, Huntington & Co., and the said Harry H. Christmas, an amended bill was filed by the complainants, stating that said Mary E. had become the owner of said first note by transfer and delivery from Payne, Huntington & Co., and praying that the money be paid to her; which allegation the said Lyon in his answer to said bill has denied. Your orators refer to said bill and proceedings in this court for greater certainty as to the mortgage and proceedings.

12 Your orators further state and charge that the debt due to Payne, Huntington & Co., or the demand or claim they may have had on said note, had been extinguished; that the tranfer to the said Mary E. Christmas was without actual consideration, and in fraud of the rights of the complainants, as creditors of said Richard Christmas, and of his said sureties; that said Mary E. had no interest in the land for which the notes were given, and that this pretended transfer was procured by the said Richard Christmas, as was the transfer of said notes to his said son, H. H. Christmas, for the sole purpose of evading the payment of his creditors, and especially the debt of complainants; and that said H. H. Christmas knew of the indebtedness of his said father and of the purpose aforesaid, at the time of the said transfer, the whole scheme above detailed being to keep the said fund for the benefit of said Richard Christmas and his family; that, notwithstanding the professions of the said Christmas to the contrary, it was and is his

purpose to defeat the collection of the complainants' debt by means of these colorable transactions; that, having, as he supposes, placed the fund solemnly pledged to his said sureties beyond their reach, the said Richard *his* filed his petition to be declared a bankrupt in the
13 State of Kentucky, under the act of Congress of March 2d, 1867.

Your orators further state and charge that said Richard Christmas has no property, so far as complainants know and believe, from which to obtain satisfaction of their debt by execution at law; that, unless restrained by an order of this court, the said Lyon will pay and the said Freeman will receive, and so place beyond the reach of complainants, the money due on the two notes aforesaid; that, as your orators are informed, the execution issued against said Lyon has been levied upon his property; that if the filing of this bill shall become known to the said Freeman, and the said Richard Christmas and H. H. Christmas, they will speedily make terms with said Lyon with a view to get possession of the money due from him.

Your orators further state that the pledge or assignment of said note of the said Lyon, as before stated, to the said Yerger for the purpose stated herein, was complete and definite, and vested in him the equitable title to the said note, which, as your orators are advised and believe, has not been and cannot be divested by the transfers and proceedings before detailed; that such pledge, being for the pay-
14 ment of complainants' debt and with a view to indemnify and save harmless the said sureties, the complainants are in equity entitled to be substituted to the rights of the said Yerger and the said Fulton Anderson, administrator as aforesaid, against the said Wiley Lyons, and to have the debt due from said Lyon on account of the note so pledged as aforesaid appropriated to the payment of their said judgment, and to have and to enforce the said mortgage and all other securities for the same for their benefit.

In consideration whereof your orators pray that the said Wiley Lyons, the said William Yerger, Fulton Anderson, administrator of Warren P. Anderson, and the said John D. Freeman, Mary E., Richard, and H. H. Christmas, who are represented in this court in the said proceedings by the said John D. Freeman, as counsel and attorney, be made defendants to this bill by process of subpœna, and that they be required to answer this bill and the allegations thereof upon their respective oaths, and especially that said Yerger be required to produce and file with his answers the letters of said Richard Christmas in his possession, and which relate to and contain the pledge of the said note of Wiley Lyons to him and the estate of said W. P. Anderson, on account of the
15 writ of error bond aforesaid; and upon the coming in of the answers, and on the hearing of the cause, your orators pray that the transfer of the said note of Wiley Lyons for $16,666 \& \frac{60}{100}$, before described, to the said H. H. Christmas, and the subsequent transfer of the note, made by said Lyon to H. H. Christmas, to the said Mary E. Chistmas be declared void as to complainants, and set aside, and the said notes of said Lyons for $8,339 \& \frac{90}{100}$ each, and hereinbefore set forth, and the judgment obtained on the first part thereof, be decreed to be held for the use of complainants, and that said Lyons be decreed to pay the same to complainants, and that all further proceedings to collect or enforce the same by means of the suits and judgments aforesaid, unless for the use of complainants, be perpetually enjoined, and if prosecuted, to be prosecuted for the use of complainants; and, in the mean while, your orators pray that writs of injunction be issued, directed

to the said Lyon, forbidding him to pay to the said Richard, Mary E., and H. H. Christmas, or to their agents, the said note and judgment, and the said Freeman from collecting or receiving the money due thereon; or, if the court shall see fit, enjoining said Lyons to pay said note and judgment, or the amounts due thereon, into this court to
16 abide the result of this suit; and if your orators are mistaken in the relief prayed for, then they pray for such other and further relief in the premises as the facts and justice of the case may render fit and proper.

T. A. MARSHALL,
HARRIS AND WITHERS, *Sol'rs.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Personally appeared before the undersigned, clerk of the circuit court of the United States for the southern district aforesaid, Lazarus Lindsey, agent and attorney in fact for the complainants, who, being duly sworn, states that he is such agent and attorney, and that the allegations of said bill are true, as he verily believes, and that his information is founded on the exhibit (A) to the bill, the letters of the said Richard Christmas, and information derived from some of the defendants.

LAZ. LINDSEY.

Sworn to and subscribed before me this 6th day of April, A. D. 1869.
GEO. T. SWANN, *Clk.*

17 In the circuit court of the United States, southern district of Mississippi.

JOHN W. RUSSELL ET AL.
vs.
WILEY LYON ET AL.

The clerk of the circuit court of the United States will issue the injunction prayed for in the bill in this cause on the complainants, or some one or more of them, by themselves or by their duly authorized agent, Laz. Lindsey, entering into bond payable to the defendants in the sum of five thousand dollars, with two or more sureties, to be approved by A. McDonnald, commissioner of the United States at Vicksburg, Missi., conditioned for the payment of all such costs and damages as may be occasioned by the wrongful suing out of said injunction. The said bond to be executed or acknowledged in presence of said commissioner, and authenticated by his certificate, and filed in the said cause.

R. A. HILL.

I acknowledge myself as security for the complainants for all costs which may accrue to the officers of court in this cause.

Given under my hand and seal April 6th, 1869.

LAZ. LINDSEY. [SEAL.]

18 Filed with Ex. A, April 6th, 1869.

GEO. T. SWANN, *Clk.*

Spa. & inj. to June rules, 1869, issued April 15th, 1869.

G. T. SWANN, *Clk.*

Exhibit A to bill.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Whereas lately, in the circuit court of the United States for the southern district of Mississippi, before you or some of you, in a cause between John W. Russell, for his own and the use of Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas H. Lindsey, in his own right and for his use as administrator of Churchill Samuel, deceased, plaintiffs, and Richard Christmas, defendant, wherein the judgment of said circuit court is in the following words, viz:

"Therefore it is ordered by the court that the said plaintiff, John W. Russell, for the use of himself, and Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas H. Lindsey, in his own right and for his own use as administrator of Churchill Samuel, deceased, recover
19 of and against the said defendant, Richard Christmas, the sum of five thousand six hundred and thirty-four $\frac{13}{100}$ dollars, the debt in the declaration mentioned, and also the sum of six thousand five hundred and twenty-one $\frac{55}{100}$ dollars for damages sustained by reason of the detention of the debt aforesaid, by the jurors in form aforesaid assessed, with interest on said sums at the rate of six per centum per annum; and also his costs and charges by him about his suit in this behalf expended; and the said defendant in mercy," &c:

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and sixty-six, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel:

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court be, and the same is hereby, affirmed, with costs, and interest until paid at the same
20 rate per annum that similar judgments bear in the courts of the State of Mississippi; and that the said plaintiff recover against the said defendant, Richard Christmas, two hundred and ten dollars and thirty cents for his costs herein expended, and have execution therefor.—26 Dec.:

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six.

Costs of plaintiff:

Clerk	$190 30
Attorney	20 00
	$210 30

Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Filed May 7th, 1867.

G. T. SWANN, *Clerk.*

SOUTHERN DISTRICT OF MISSISSIPPI, *ss:*

I, George T. Swann, clerk of the circuit court of the United States for said district, hereby certify that the foregoing two pages contain a full and true transcript of the mandate of the Supreme Court of
21 the United States in the cause therein stated, filed in said circuit court on the 7th day of May, A. D. 1867, as the same remains on file therein.

Given under my hand and seal of said court, at office, in Jackson, in said district, this 30th day of March, A. D. 1869.

[L. S.] GEO. T. SWANN, *Clerk.*

Filed with bill 6th Ap'l, 1869.

GEO. T. SWANN, *Clk.*

And on the 15th of April, 1869, a subpœna was issued in this cause, which, with the returns and endorsements thereon, is as follows, viz:

UNITED STATES OF AMERICA,
Southern District of Mississippi, sc:

The President of the United States to the marshall of the southern district of Mississippi, greeting:

You are hereby commanded, without delay, to summon Wilie Lyons, William Yerger, Fulton Anderson, administrator of Warren P. Anderson, deceased, and John D. Freeman, residents of said southern district of Mississippi, and citizens of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mis-
sissippi, at the city of Jackson, at rules, to be holden in the
22 clerk's office of said court, on the first Monday in June next, to answer a bill in equity exhibited against them by John W. Russell, Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas H. Lindsey, in his own right and in his right as administrator of Churchill Samuel, deceased, citizens of the State of Kentucky; and, unless they shall enter their appearances therein in the clerk's office aforesaid on or before the time specified above, the said bill will be taken for confessed. And have then there this writ, and how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 15th day of April, A. D. 1869, and in the 93d year of the independence of the United States of America.

[L. S.] GEO. T. SWANN, *Clerk.*

Executed on all the within-named defendants except Willie Lyons on 16th day of April, 1869.

R. H. WINTER, *U. S. Marshal.*

UNITED STATES OF AMERICA,
Southern District of Mississippi, U. S. Marshall's Office:

I hereby nominate and appoint Geo. Moorman my special deputy to execute and return the within process according to law.
23 Witness my hand and seal this 16th day of April, 1869.

[SEAL.] R. H. WINTER,
U. S. Marshal Southern District Mississippi.

Executed personally on the within-named Wilie Lyons April 17, '69, 10 a. m., and at the same time delivered him a true copy of the within writ. This April 17, 69.

R. H. WINTER, *U. S. Marshal,*
Pr. GEO. MOORMAN, *D. U. S. M.*

And on the 15th day of April, 1869, the following injunction bond was filed in this cause, to wit:

UNITED STATES OF AMERICA:

In the circuit court of the United States for the southern district of Mississippi.

JOHN W. RUSSELL, &c.,
vs.
WILEY LYON, WM. YERGER, FULTON ANDERSON, adm'r, &c., of the estate of Warren P. Anderson, dec'd, and John W. Freeman.

Know all men by these presents that we, John W. Russell, Thomas N. Lindsey, and Philip Swigert, as principals, and Thomas A. Marshall and Richard S. Buck, as securities, are held and firmly bound unto the defendants in the above-named case in the just and full sum of
24 five thousand dollars; the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, adm'rs, &c., jointly and severally, firmly by these presents, sealed with our seals, and dated this 15th day of April, 1869.

The condition of this obligation is such, that whereas the above-bound complainants in the case above named have prayed for and obtained the writ of injunction from the court aforesaid, in the cause aforesaid, enjoining and restraining the said Wiley Lyons from paying to Mary E. Christmas, Richard Christmas, H. H. Christmas, Payne, Huntington & Co., or to their agent and attorney, Jno. W. Freeman, the money due from him on two certain notes for, viz, one note of Wiley Lyons to H. H. Christmas, for eight thousand three hundred and thirty-nine $\frac{90}{100}$ dollars, payable Dec'r 1st, 1866, and the other note for same amount, payable Feb'y 1st, 1868. On the last a judgment was rendered at the Nov'r term, 1868, of said court, and on the other a suit is pending in the name of H. H. Christmas, for the use of Payne, Huntington & Co., in which Mary E. Christmas is asking to be made the usee instead of Payne, Huntington & Co.; and a bill in chancery is also pending, to foreclose a mortgage for the amount of said notes and interest, filed by Payne, Huntington & Co., H. H. Christmas, Mary E., and
25 Richard Christmas against Wiley Lyon, and also enjoining and restraining the said parties named, or Jno. W. Freeman, their attorney, from the further prosecution of said pending suits, and payment by the said Lyons of the said notes or judgments, except for the use of complainants.

Now, if said complainants shall prosecute their said writ of injunction with effect, and, should they fail therein, pay and satisfy to the defendants all such costs and damages as may be occasioned by the wrongful suing out of said injunction in case the same shall be dissolved, then this obligation to be void; otherwise to be and remain in full force and virtue.

JNO. W. RUSSELL, [SEAL.]
By LAZ. LINDSEY,
Atto. and Agent.
PHILIP SWIGERT, [SEAL.]
By LAZ. LINDSEY,
Atto. & Agent.
THO'S N. LINDSEY, [SEAL.]
By LAZ. LINDSEY,
Atto. and Agent.
T. A. MARSHALL. [SEAL.]
R. S. BUCK. [SEAL.]

Laz. Lindsey has shown me satisfactory proof that he is the authorized agent and attorney in fact for the compl'ts, and I approve the security as being sufficient on the foregoing bond.
Vicksburg, Ap'l 15, 1869

ALLAN MACDONALD,
U. S. Comm'r for Southern District of Mississippi.

Filed Ap'l 15, 1869.

G. T. SWANN, *Clk.*

26 UNITED STATES OF AMERICA,
Southern District of Mississippi:

The President of the United States of America to Wilie Lyons and John D. Freeman, greeting:

Whereas John W. Russell, Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas H. Lindsey, in his own right, and in his right as administrator of Churchill Samuel, deceased, citizens of the State of Kentucky, have exhibited in the circuit court of the United States for the southern district of Mississippi their certain bill in equity against you and others, praying relief and injunction touching the matters in said bill set forth and contained, and have obtained from the Honorable Robert A. Hill his fiat for injunction, as therein prayed for, on the filing of a certain bond in said fiat mentioned, which hath been filed in pursuance of said order:

Now, therefore, pursuant to the order aforesaid, you are hereby commanded and enjoined that you, John D. Freeman, absolutely refrain and desist from collecting or receiving, by prosecution of suits, judgments, or otherwise, the money due by Wilie Lyons on certain notes made by him payable to H. H. Christmas, to wit, one note for $8,339 91, due December 1st, 1866, and one for the like sum, due February 1st, 1868; the first being the foundation of a judgment
27 rendered November 13th, 1868, in the circuit court of the United States, southern district of Mississippi, and the last being in a pending suit in said court by said Christmas, for the use of Payne, Huntington & Co., and both of said notes being included in a bill in chancery pending in said court by H. H. Christmas, Richard Christmas,

Mary E. Christmas, and Payne, Huntington & Co. against Wilie Lyons, and that you abstain from further prosecution of said suits and judgment except as you may be hereafter directed by our said court; and that you, Wilie Lyons, absolutely abstain and desist from paying to the said John D. Freeman, H. H. Christmas, Mary E. Christmas, Richard Christmas, or Payne, Huntington & Co. the money due on the notes aforesaid, or to any one for them, or to any assignee of them, or either of them, until the further order of our said court; and this you shall in no wise omit, under the penalty of the consequences that may follow.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court hereto affixed at Jackson, in said district, this 15th day of April, A. D. 1869.

[L. S.] GEO. T. SWANN, *Clerk.*

28 Executed on John D. Freeman in person, and by giving him a true copy of this writ, on the 16th day of April, 1869.

R. H. WINTER,
U. S. Marshal.

UNITED STATES OF AMERICA,
Southern District of Mississippi, U. S. Marshal's Office:

I hereby nominate and appoint Geo. Moorman my special deputy to execute and return the within process according to law.

Witness my hand and seal this 16th day of April, 1869.

[SEAL.] R. H. WINTER,
U. S. Marshal Southern District Mississippi.

Executed personally on the within named Wilie Lyons April 17, '69 10 a. m., and at the same time delivered him a true copy of the within writ. This April 17, '69.

R. H. WINTER, *U. S. Marshal,*
Pr. GEO. MOORMAN, *D. U. S. M.*

And afterwards, to wit. on the 30th day of April, 1869, the following separate demurrer of John D. Freeman, one of the defendants herein, was filed in this cause, to wit:

29 In the circuit court of the United States, southern district of Missi., May term, A. D. 1869.

JOHN W. RUSSELL ET ALS.
vs. } 86.
WILLIE LYONS, JOHN D. FREEMAN, ET ALS.

The separate demurrer of John D. Freeman, one of the defendants, to said bill of complaint.

This defendant, by protestation, not confessing all or any of the matters in said bill contained to be true, &c., doth demur to said bill, and for cause of demurrer doth show that said complainants have not by their said bill made such a case as entitles them in a court of equity to any discovery from these defendants respectively, or any of them, or to any relief against them, or either of them, as to the matters contained in said bill, or any of such matters, and that any discovery which can be made by these defendants, or either of them, touching the matters complained of in the said bill, or any of them, cannot be of any avail to the

said complainants, nor entitle said complainant to any relief in this court touching the matters therein complained of.

And for special cause of demurrer this defendant assigns the following:

30 1st. This court has no jurisdiction of the case made by the bill.

2nd. It appears that Richard Christmas, H. H. Christmas, and Mary E. Christmas are not parties to said bill, and are material parties in interest, without whom this court can make no order or decree in the premises; and that said Richard, Mary E., and H. H. Christmas reside in the State of Kentucky, being the same State where the complainants reside; and that said Mary E., Richard, and H. H. Christmas are not made parties to said bill, and cannot be made parties thereto, because of their said residence in said State of Kentucky with said complainants.

3rd. The complainants by their bill show no right or title in law or in equity to the judgment in favor of H. H. Christmas, nor to the note claimed and sued for by Mary E. Christmas, the collection of which is sought to be enjoined by this bill.

4th. It does not appear by said bill that defendants Yerger, and Anderson, as adm'r of W. P. Anderson, have any such interest in the judgment and note, the collection of which is sought to be enjoined by this bill, as can be made the subject of a decree, as prayed for

31 in said bill.

It does not appear that there is any judgment against Yerger, and W. P. Anderson, or against the adm'r of W. P. Anderson; nor that they have been compelled to pay any money for said Richard Christmas as his sureties, nor that said Christmas ever assigned said note or notes in said bill described to said Yerger and Anderson, or either of them.

5th. And for other reasons to be assigned on argument.

JOHN D. FREEMAN,
In proper person.

I hereby certify that I am counsel for defendant Freeman, and that in my opinion the above demurrer is well founded in point of law.

JOHN D. FREEMAN,
Sol. for Def'ts.

Personally appeared before the undersigned, clerk of this court, the above defendant, John D. Freeman, who on oath states that said demurrer is not interposed for delay.

JOHN D. FREEMAN.

Sworn to and subscribed before before me Ap'l 30, 1869.

GEO. T. SWANN, *Clk.*

Filed Ap'l 30th, 1869.

G. T. SWANN, *Clk.*

32 And on said 30th day of April, 1869, the following motion to dissolve the injunction in this cause was filed in said court, to wit:

JOHN D. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } 86, N. S.

Motion to dissolve the injunction in this case.

1st. Because the same was improvidently granted.

2nd. Because there is no equity on the face of the bill.

3rd. Because the material parties in interest in the subject-matter of said bill reside in the same State with the complainants, and are not, and cannot be made, parties to said bill.

4th. Because no final decree can be made in the absence of H. H. Christmas, Mary E. Christmas, and Richard Christmas, parties in interest, who reside in Kentucky, where complainants reside, and cannot be made parties to said bill.

5th. And for other reasons to be stated on hearing of the motion.

JOHN D. FREEMAN, *for self.*

Filed Ap'l 30th, 1869.

G. T. SWANN, *Clk.*

33 And afterwards, to wit, on the 3rd day of May, 1869, the following entry was made in said court in this cause, to wit:

Set for hearing on demurrer of defendant Freeman to bill.

And on the 6th day of May, 1869, a subpœna was issued in this cause as follows, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, sc:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

You are hereby commanded, without delay, to summon Richard Christmas, H. H. Christmas, and Mary E. Christmas, citizens of the State of Kentucky, to appear, before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules, to be holden in the clerk's office of said court, on the first Monday in June next, to answer a bill in equity exhibited against them and others by John W. Russell, Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas H. Lindsey, in his own right, and in his right as administrator of Churchill Samuel, deceased, citizens of the State of Ken-
34 tucky, and unless they shall enter their appearances therein, in the clerk's office aforesaid, on or before the time specified above, the said bill will be taken for confessed. And have then there this writ, and how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 6th day of May, A. D. 1869, and in the 93rd year of the independence of the United States of America.

[L. S.] GEO. T. SWANN, *Clerk.*

I acknowledge service of this writ on myself, and waive copy.
May 6, 1869.

JOHN D. FREEMAN.

Executed on John D. Freeman in person, attorney for Richard Christmas, H. H. Christmas, and Mary E. Christmas, and copy waived, on 6th day of May, 1869.

R. H. WINTER,
U. S. Marshal.

Afterwards, to wit, at a term of said circuit court of the United States, begun and held at Jackson, Mississippi, on the first Monday

(the 3rd day) of May, A. D. 1869, before the Honorable R. A. Hill,
35 presiding judge, the following order was made in this cause, and entered upon the minutes of said court, on the 13th day of May, 1869, to wit:

JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS ET AL. } 86, N. S.—In chancery.

This cause having been set down for hearing on the demurrer of John D. Freeman, and the same having been duly considered:

It is ordered that said demurrer be overruled, and said defendant be ordered to answer in sixty days.

And afterwards, on said 13th day of May, 1869, at said May term, 1869, of said circuit court, the following order was made by said court in this cause, to wit:

JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS ET AL. } No. 86, N. S.—In chancery.

This cause having been set for hearing, and heard on the motion of John T. Freeman to dissolve the injunction heretofore granted herein:

It is ordered and considered by the court that said injunction be, and the same is hereby, modified, as follows:

"The said defendant Willie Lyons, against whom execution had been issued in favor of H. H. Christmas for the sum of $ in
36 case No. 469 at law, is hereby ordered to pay the money into court within ninety days from this date; and, in the event of his failure to do so, the clerk of this court is hereby directed to issue a venditioni exponas for the sale of the property of the defendant Lyons heretofore levied upon, and the marshal will proceed to make the money thereon according to law, and pay the same into court, subject to the further order of this court.

"And it is further ordered that the plaintiff in the case at law of H. H. Christmas vs. Willie Lyons, No. 468, may proceed to trial forthwith, and, in the event of judgment in favor of the plaintiff, execution may issue thereon, and the money, made in due course of law and paid into court, subject to the further order of this court.

"And it is further ordered that the complainants, H. H. Christmas, Mary E. Christmas, et als., in the chancery cause No. 46, N. S., against the said Willie Lyons, for the foreclosure of the mortgage lien of complainants, set forth in said bill of complaint, be, and the same is hereby, allowed to proceed to final decree, subject to such further order as this court may make in said cause on the final hearing of the same."

On the 18th day of May, 1869, the following motion by the de-
37 fendant John D. Freeman was filed and entered in this cause, to wit:

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } No. 86, N. S.

Motion by defendant John T. Freeman to compel complainants to

file forthwith a certified copy of the alleged judgment of May 25th, 1860, of John W. Russell et als. vs. Richard Christmas, referred to in said bill, and on which the cause of action of complainants is alleged to rest.

JOHN D. FREEMAN,
For motion.

Filed and entered May 18th, 1869.

GEO. T. SWANN, *Clerk.*

And on the 26th day of May, 1869, the same being also a day of said term of said circuit court, begun and held before the Hon. R. A. Hill, at Jackson, on the first Monday of May, 1869, the following order was made in this cause and entered on the minutes of said court, to wit:

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } 86, N. S.

It is ordered that, when the funds arising in this cause are paid into court, *that* the clerk pay the officers the costs that may be due
38 them out of said fund; also that he pay to John D. Freeman, commissions as his counsel fee in said cause, the sum of ten per centum on the first five thousand dollars, and 5 per centum on the remainder of the fund so paid in; but the question as to whom said costs and fees shall be charged on final hearing is reserved.

And on the 26th day of May, 1869, the following other order was made in this cause by said circuit court and entered on the minutes thereof, to wit:

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET AL. } No. 86, N. S.

Ordered by the court that the motion of John D. Freeman, to require complainants to file forthwith a certified copy of the alleged judgment of May 25th, 1860, of John W. Russell et al. against Richard Christmas, referred to in complainants' bill, be, and the same is hereby, overruled.

At rules, held in the clerk's office of said court on the 1st Monday (the 7th day) of June, 1869, the following was entered upon the rule docket of said court in this cause, to wit:

39 JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS ET AL. } 86, N. S.—In equity.

Defendants William Yerger and Willie Lyons, by their sol's, W. and J. R. Yerger, enter their appearance in this suit.
Entered June 7, 1869.

GEO. T. SWANN, *Clk.*

On the 7th day of June, 1869, the following demurrer of defendant Freeman, served with process as counsel of defendants named herein, was filed in this cause, to wit:

In the circuit court of the United States and southern district of Mississippi, to June rules, 1869.

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } No. 86.

And said John D. Freeman, who has been served with process as the attorney of defendants R. Christmas, Mary E. Christmas, and H. H. Christmas, by protestation, not confessing all or any of the matters in said bill contained to be true, &c., doth demur to said bill, and for cause of demurrer assigns the following:

1st. There is no equity on the face of the bill.

40 2nd. These defendants are admitted on the face of the bill to be citizens and residents of the State of Kentucky, where all the complainants reside, and hence this court can have no jurisdiction of the persons of these defendants.

3rd. There is a misjoinder of parties resident in the State of Kentucky with parties resident in the State of Mississippi.

4th. Defendants Yerger, Anderson, and Lyons are not properly parties defendant, and are made so improperly to give this court jurisdiction of the case.

5th. The complainants show no right to or interest in the judgment at law sought to be enjoined.

6th. It does not appear by said bill that defendants Yerger and Anderson have acquired any rights to the notes, judgments thereon, or the fund in controversy, to which complainants can be subrogated in equity.

JOHN D. FREEMAN,
Sol. for Def'ts.

I hereby certify that I am counsel for the said John D. Freeman, and that, in my opinion, the above demurrer is well founded in law.

JOHN D. FREEMAN,
Sol. for Def'ts.

Personally appeared before the undersigned, clerk of this court,
41 the above defendant John D. Freeman, who on oath states that said demurrer is not interposed for delay.

JOHN D. FREEMAN.

Sworn to and subscribed before me 7 June, A. D. 1869.

GEO. T. SWANN, *Cl'k.*

Filed 7th June, 1869.

GEO. T. SWANN, *Cl'k.*

And on the 22d day of July, 1869, the same being a day in said term of said circuit court, begun and held before the Hon. R. A. Hill, at Jackson, on the first Monday of May, 1869, the following order was made by said court in this cause, to wit:

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } No. 86, N. S.

It appearing to the court that the sum of money enjoined by the com-

plainants in this case amounts to the sum of $18,349 24, and that the commissions claimed to be due to J. D. Freeman as counsel for H. H. Christmas and Mary E. Christmas are, by agreement with them, 10 per cent., amounting to the sum of $1,834 92, and the parties to this suit, being willing that there shall be now paid to said Freeman, on account of his fees, the sum of 10 per cent. on the sum of $5,000 of said
42 sum so due, and 5 per cent. on $13,349 24, the balance due as aforesaid, making the sum of $1,167 46, to be paid forthwith out of the money heretofore paid into court in this case:

It is therefore ordered by the court that the clerk of this court shall pay to said Freeman, out of the money paid into court in this case, the sum of $1,167 46, in part of the amount claimed by said Freeman as aforesaid.

It is further ordered that the claim of said Freeman for the balance of fees, according to his alleged agreement, is not adjudicated by this order, but remains for future adjudication and settlement; and the question as to whom said fees and commissions shall be charged on final hearing is reserved for further order.

And on the 22d July, 1869, the following order, setting this cause for hearing on the demurrer of John D. Freeman, was filed, to wit:

JOHN W. RUSSELL ET ALS.
vs. } 86.
WILLIE LYONS ET ALS.

Set the demurrer of John D. Freeman, attorney for H. H. Christmas, Mary E. Christmas, and Richard Christmas, for final hearing.

JOHN D. FREEMAN, *Sol.*

43 On Friday, the 23rd day of July, 1869, it being also a day of said term of said circuit court of the United States, begun and held at Jackson, before the Hon. R. A. Hill, on the first Monday of May, 1869, the following order was made in this cause, to wit:

JOHN W. RUSSELL ET AL.
vs. } 86.—In chancery.
WILLIE LYONS ET AL.

On motion of defendants H. H. Christmas and Mary E. Christmas, by their counsel:

It is ordered that said defendants have leave to take the depositions of their co-defendants, Willie Lyons and Richard Christmas.

And on the 12th day of August, A. D. 1869, the defendant William Yerger came and filed his answer to the bill of complaint herein, and the same, with the exhibits thereto, are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi:

JOHN W. RUSSELL ET AL.
vs. } No. 86, N. S.—In equity.
WILLIE LYONS EAT AL.

The separate answer of William Yerger to the bill of complaint filed herein by John W. Russell and others against this respondent
44 and others.

This respondent, saving, &c., answering, says he admits the ren-

dition of the judgment for the amount and at the time stated in the bill in the circuit court of the United States for the southern district of Mississippi, against his co-defendant Richard Christmas.

He also admits the writ of error to the Supreme Court and the supersedeas, and also the execution of the writ of error and supersedeas bond by said Christmas, with this respondent and Warren P. Anderson as sureties of said Christmas on said bond, as stated in the bill.

He also admits the affirmance of the judgment, as stated in the bill, in the Supreme Court of the United States, and the mandate to this court.

Respondent admits the loss and destruction of the record of this case in this court, and that the transcript of the record from the Supreme Court of the United States, filed herein, contains a true copy of the record in this court.

Further answering, he admits that the liability of himself and said Anderson, as sureties on said writ of error bond, became fixed by judgment of affirmance in said Supreme Court, and that said judgment remains unsatisfied.

Respondent admits the temporary sojourn of the defendant
45 Richard Christmas in Texas and England, as stated in the bill.

He also admits that the pecuniary affairs of said Christmas had become deranged by the war, and that he did enter into correspondence with this respondent relative to indemnifying him and said Anderson against any loss on account of their liability as sureties on the writ of error bond as aforesaid.

Respondent will here state that, in the year 1860, when the judgment was rendered against the said Christmas, he applied to this respondent to become surety on the writ of error bond, and at the same time requested this respondent to ask said Warren P. Anderson to unite with respondent in executing said bond as surety for said Christmas. Said Christmas stated at the time that his acquaintance with said Anderson was not of such a character as to render it probable that said Anderson would become his surety upon the mere personal application of said Christmas, but he knew that, on account of the intimate social relation existing between respondent and said Anderson, *that*, if respondent would request said Anderson, *he knew* he would go upon the bond as surety. Said Christmas stated at the same time that he was per-
46 fectly solvent, and that respondent knew this fact; and that respondent might assure said Anderson that if he would go upon said bond as surety said Christmas would at all times indemnify and protect him and also this respondent against any loss or damage whatever on account of the liability as surety on said bond. Acting on this request of said Christmas, respondent asked said Anderson to become the surety of Christmas, assuring him at the same time that he was authorized by said Christmas to state, if he would do so, that said Christmas would at all times indemnify and save him harmless from any loss in consequence of his executing said bond as such surety; and said Anderson thereupon did execute said writ of error bond together with this respondent, as the surety of said Christmas, but distinctly stipulated that said Christmas should indemnify and save him harmless, in accordance with the assurance given by said Christmas through this respondent. Respondent has been informed that said Christmas did place in the hands of said Anderson, as indemnity against his liability as surety on said bond, the acceptance of the commercial firm of Martin, Cobb
47 & Co., and that said Anderson afterwards, at the request of said Christmas, surrendered said acceptance to said Christmas upon the distinct promise and agreement of the said Christmas that he would

place other security and indemnity in the hands of said Anderson, or otherwise indemnify and save him harmless from his liability as surety. Before the case came on to be heard in the Supreme Court of the United States, the civil war broke out, and said cause was continued in the Supreme Court of the United States from time to time until the year 1866. In the mean time the said Anderson died in the year 1861. The said Christmas left Mississippi in the spring of the year 1862, and remained absent therefrom continuously till the present time, except that in the month of June, in the present year, he visited this State for a few days for the purpose of answering the bill filed by complainants herein.

Further answering, respondent says that after the close of the war, in the fall of the year 1865, the said Christmas wrote to this respondent from Liverpool, in England, where he then was, relative to the liability of respondent as his surety on the bond aforesaid. Said letter is dated October 23rd, 1865, and was received by respondent in the due
48 course of mail thereafter. It is here filed, marked Exhibit No. 1, and made a part of this answer. In it said Christmas says:

"I feel great uneasiness about your liability on the bond in the suit of Russell against me. I have not heard a word from the suit since taken up. I presume it will be decided against as a matter of course, and how to pay it is a mystery. I am willing to give up all I have to pay it, but this all is worthless, I am afraid. I have ever held the Lyon note as sacred for the payment of this debt, and have it now in N. York, endeavoring to sell it, with the mortgage, to pay this debt. I expect to hear from it daily. If not sold, I will send it to you as soon as I return."

The Lyons note here referred to was a note given by Wiley Lyons for the purchase-money of a tract of land, slaves, &c., situated in Bolivar County, and which note was secured by a mortgage on said land, &c.

Soon after the receipt of this letter, respondent wrote to said Christmas, informing him that respondent had seen the said Lyons, and that he could make an arrangement with him to pay off the Russell debt, and requested said Christmas to send the Lyons note to respondent for that purpose. In the same letter, respondent informed said Christmas
49 that he was very much gratified at his desire to indemnify his sureties on the writ of error bond; that, so far as respondent was individually concerned, it was not a matter of so much moment, as respondent had been broken up by the war, but that respondent was very solicitous that the estate of Warren P. Anderson should be indemnified, as said Anderson had become the surety of Christmas on the application of respondent, and that he had died; and if this debt came against the estate, it would break it up and leave his children without anything. Respondent kept no copy of this letter, and gives the substance of its contents from memory. Respondent received from said Christmas a letter, dated 14th of February, in reply to the above. This letter is here filed, marked Exhibit No. 2, and made a part of this answer. Afterwards, on 17th of February, in the year 1866, the said Christmas wrote to this respondent. That letter has been lost or mislaid, but is referred to in a letter from Christmas to this respondent, dated February 20th, 1866. In the letter of the 20th of February, the said Christmas says, referring to the Lyons note:

"I will hold this note, $16,666 60, and many years' interest, at 8 per cent., always subject to this debt, provided the judgment is con-
50 firmed, until which let the matter rest as it is. I will return in April or May, and will write you from Louisville, Kentucky. Whenever a compromise is to be offered, it should and must be through

you, as surety, knowing they would rely on your future prospects as a lawyer to make money and pay it. I am sorry you told Lyons of our understanding, as he will be apt to let Russell know, or his attorney, the arrangement, and in that way defeat us in making a advantageous compromise."

Respondent here files, marked Exhibit No. 3, the letter of 20th February aforesaid.

Afterwards, on the 21st of February, 1866, said Christmas wrote to respondent another letter, marked "Confidential," and which is here filed; marked Exhibit No. 4. In this letter he says:

"I wrote you on 17th and 20th inst., since which I have received some information which causes me to countermand my proposition for Lyons to take up my debt or exchange dollar in his paper. I have to-day written Burrell, who, I learned through my son, is at Vicksburg, to propose a compromise with Russell, which, I presume, he will effect. You may rest assured I will protect you with Lyons' note of $16,666 60, which is now over $20,000. This should not be known, to enable me to make a favorable arrangement."

In the same letter he says:

51 "I will be over in May, or as soon as the storms are over. Say nothing to Lyons. To do so would embarrass my intention."

Respondent relied fully upon these assurances of Christmas, and accepted the pledge of the Lyons note thus given for his indemnity, and felt confident that the said Christmas would, on reaching the United States, either send it to this respondent or use it in settlement with Russell in relieving this respondent and the estate of Anderson from liability; and respondent was much astonished at receiving a letter from said Christmas, at Louisville, Kentucky, dated May 12th, 1866, and which letter is here filed, marked Exhibit No. 5. In that letter said Christmas says:

"On my arrival here I found the notes of Lyons under attachment. I left them in New York, as I supposed, in the hands of a friend, A. O. Brannin, *and* honorable man, who I never owed a cent, to sell for cash. In this I was mistaken. He managed to find out some indebtedness of mine, and got it transferred to him, thereby compelling me to transfer some $9,000 of this debt to him and others. I transferred the balance to my son, H. H. Christmas, who, you are aware, I owed a large trust debt for property sold, uses, and rents, given him by H. R. W. Hill in his
52 lifetime. In doing so, I believe I have not lost sight of my purpose of protecting you from final loss. It shall be done, and I will try to satisfy you of this fact."

Respondent afterwards received a letter from said Christmas, dated July 5th, 1866, which is here filed, marked Exhibit No. 6. In it he says:

"In reply to your rather complaining letter, I replied, and again say, I have not lost sight of my obligations to you and Anderson, and have my plans of protection, though I learned by Mr. Martin the estate is insolvent, and he had lost $20,000 by it, but this does not lessen my obligations."

Afterwards respondent received another letter from said Christmas, dated September 28th, 1866. This letter is here filed, marked Exhibit No. 7. In it said Christmas says:

"The Russell suit is set for trial at Washington, 1 December. I have the matter under consideration for compromise. Were there but one plaintiff it could be settled, it appears, but unfortunately there are several. This debt will not be the last of your indebtedness paid. I learn Anderson's estate is insolvent."

These are all the letters respondent has received touching the note of said Lyons. Respondent insists and claims that said Christmas assigned and transferred the note of said Lyons as a mortgage and pledge,
53 which a court of equity would enforce as an indemnity and security for this respondent and the estate of said Anderson against any loss or liability on their part as the surety of said Christmas. And respondent insists that the transfer to the said H. H. Christmas was not bona fide; and, even if it was, being made after the maturity of said note, and to secure an antecedent liability from the said Richard Christmas to his son, could not impair the prior equitable rights of this respondent in the premises.

Respondent states that he does not know or admit that there was any indebtedness whatever on the part of the said Richard Christmas to his son, H. H. Christmas. Respondent has heard, and he believes the facts to be, that, prior to the year 1841, Richard Christmas was the owner of a large property, consisting of land and slaves, and that he was also largely indebted at that time to various persons; and, being so indebted, he made an arrangement with H. R. W. Hill with a view to protect his property from the claims of his creditors, and to save the same for the use and enjoyment of himself and his family, by which said Hill made a nominal purchase of said property under some judgments against or mortgages made by said Richard Christmas, and then conveyed
54 the same to H. H. Christmas, then a minor, between five and eight years of age; that the possession of said property was never changed, and the said Richard Christmas ever afterwards held said property, using and controlling it as his own, and any pretended indebtedness on the part of said Richard Christmas to said H. H. Christmas grew out of this arrangement.

Respondent denies that the transfer to the said H. H. Christmas of the Lyons note was bona fide; but respondent believes that the same was made for the purpose of avoiding the said note being made subject to the debt of said Russell and others by steps which they might take to subject the same, or which might be taken for that purpose by this respondent as surety.

Further answering, respondent states that he admits, and from information believes it to be true, that since the pretended transfer of the Lyons note to his son, H. H. Christmas, that the same has been under the actual control and management of the said Richard Christmas, his son only acting nominally, and doing whatever his father directed in the premises.

Respondent admits the settlement made with Wiley Lyons in June, 1866, and the execution of the two notes by said Lyons for the balance due on his original note, as stated in the bill. He admits the
55 transaction with Payne, Huntingdon & Co. as stated in the bill. He also admits the institution of the suits in this honorable court against the said Lyon, and the proceedings therein as stated in the bill. He also admits that by some arrangement the note held by Payne, Huntington & Co., as collateral security by them, was delivered up by them on their being paid the amount for which it was held by them as collateral security, and the suit on the same is now being prosecuted for

the use of Mistress Mary E. Christmas, the wife of said Richard. But respondent insists and claims that neither the said Mary E. Christmas nor the said H. H. Christmas have any right to appropriate the proceeds of the debt due by said Lyons until this respondent and the estate of said Anderson are relieved from liability as sureties of said Richard Christmas on the writ of error bond aforesaid. And respondent asks that this honorable court will decree that the debt of the said Lyons shall be collected, and the proceeds thereof applied to the payment of the judgment in favor of Russell and others in the extinguishment of the liability this respondent on the writ of error bond aforesaid.

Further answering, respondent says that he was informed, dur-
56 ing the spring of the present year, that the complainants were about proceeding to sue on the writ of error bond, and to enforce collection of the same from this respondent and the estate of said Anderson. He was also informed, and from information states the fact to be, that the said Richard Christmas had made a voluntary application to be discharged as a bankrupt, and he having failed entirely to settle or compromise the debt with said Russell, this respondent urged and claimed that the complainants should proceed at once directly to subject the debt due by said Lyons, and which had been transferred, as above stated, as an indemnity for the liability of this respondent and said Anderson to the satisfaction of the judgment aforesaid in favor of complainants.

And now, having fully answered, respondent prays, &c.

W. AND J. R. YERGER, and
W. YERGER, JR., *Sol's.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

This day William Yerger personally appeared before George A. Smythe, commissioner, &c., and made oath that the statements in the foregoing answer made of his own knowledge are true, and those made on the information of others he believes to be true.

W. YERGER.

57 Sworn to and subscribed before me this 12th day of August, A. D. 1869.

GEO. A. SMYTHE,
U. S. Commissioner.

Filed and entered Aug. 12th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 1 to answer of W. Yerger.

WASHINGTON HOTEL, LIME STREET,
Liverpool, Oct. 23, 1865.

WILLIAM YERGER, Esqr.

DEAR SIR: I wrote you from Havana, with request to answer at Louisville, Ky., at which place I expected to be by 1 Oct. I then had no idea of ever being in this country, but the health of Mrs. Christmas made it imperative to put her under the care of Dr. Sims, who alone, I was satisfied, could cure her, who had left N. York during the war, and located in London, where Mrs. C. is improving, and will finally get well—so says Dr. Sims—hence my detention, and at this time cannot say at what time I will arrive in America; but as soon as Mrs. C. gets well, or

I may leave her and return in a short time. I feel great uneasi-
58 ness about your liability on the bond in the suit of Russell against me. I have not heard a word from the suit since taken up. I presume it will be decided against as a matter of course, and how to pay it is a mystery. I am willing to give up all I have to pay it, but this all is worthless I am afraid. I have ever held the Lyon note as sacred for the payment of this debt, and have it now in N. York endeavoring to sell it, with the mortgage, to pay this debt. I expect to hear from it daily. If not sold, I will send it to you as soon as I return, which must be soon, or I will be compelled to drive some nobleman's carriage for a living; and, after I return, I may get a situation possibly (if the negro will allow) as bootblack to the President or some of the Cabinet. Let me hear from you immediataly at N. York, care H. B. Tibbits, No. 111 Broadway. I may locate on Mrs. Christmas' land, near Louisville, and starve out the little balance of life. I have struggled hard since the war to save a little to commence life again, and got out a little cotton, which was absorbed my ruinous expenses in getting it out through Mexico. Many now here engaged in this business *has* been brought in debt, most of the cotton being under heavy advances;
had to be sold last May at 12 and 14 pence, which did not pay
59 charges, saying nothing of first cost. I hope your situation is such that you cannot be forced to make sacrafice of property. If so, it may enable me to make some compromise.

Give me your views about labor. Can negroes be made ever to work as freemen? *Is* lands ever to be worth anything on the river. Are you attempting to plant? I learn the levees are all broke, and county overflowed last spring. I sent you from Havana my oath of allegiance to U. S. Did you receive it? I left my son Harry in Texas, and have not heard from him. Will you sign his name as applicant for pardon; and the governor to recom'd him for pardon. He, as known, has been in the war from the commencement to last moment, and has held the rank of captain of *of* artillery. If this is not done, some action may be taken on his lands on the Mississippi as abandoned property. Look to this matter, and protect his interest as far as you can. I hope to meet him in Louisville.

My kind regards to your good family, as well as to Mr. James Rucks, and believe me, as ever, your friend, &c.,

R. CHRISTMAS.

Will the chancery suit of my brother's heirs be revived against
60 me? *Has* the papers been preserved. When will there be courts on the river?

R. CHRISTMAS.

Exhibit No. 2 to answer of William Yerger.

LIVERPOOL, *Feb'y* 14, 1866.

WILLIAM YERGER, Esqr.

DEAR SIR: I am in rec'pt 12 Jan'y; yours directed to Louisville, Ky., I have not received, hence have not some information requested in my first letters. I am willing to make a liberal arrangement with Mr. Lyons; having been absent from the country for three years, I know but little of the situation of the people or country, and you do not give me any insight to Mr. Lyons' situation, or the property I sold him. The value of this land at present would be necessary for me to know, and if

cultivated at this time. The note I am sure is not sold, and to-day I countermanded its sale at any price.

Hoping soon to hear from you, I am, yours truly,

R. CHRISTMAS.

(Over:)

I could not safely send Lyons' note by mail, as it's payable to me
61 or bearer; hence, if lost, might put me to much trouble. I will return to America in April or May, possibly sooner if the elements will keep quiet. We have had so many disasters at sea that I am afraid to start, and I learn a poor man cannot live in America now. My family and self are living in France at $1,200 per year. I would remain forever if I had means. Have you examined the situation of my son's land on the river? If in possession of the Freedman's Bureau write him to Louisville, Ky., what steps to take. I presume he will be in Issaquena soon.

Ask Lyons for a proposition. Have you ascertained the situation of my son's land in Issaquena County? I fear the Freedman's Bureau may take possession of it and put him to trouble. Are any taxes being collected on the river? Mr. Fitler, who, I learn, moved to Hinds County, was acting as agent for this property, and I left a family on the place to protect it, who, I learn, was all murdered, and the dwelling burnt over them. Were the records of Issaquena saved? Will the suit of my brother's heirs be revived or not; if so, will you attend to it? I have paid Mr. Burwell and yourself in advance to do so, and I insist on having a decree in my favor, if possible. Where is Mr. Burwell? I
62 have written him very often. I expect to leave here about 1 May. The disasters at sea *has* deterred me leaving until spring. Direct letters to this place, care of R. A. Curd & Co.

R. C.

Exhibit No. 3 to answer of William Yerger.

LIVERPOOL, *Feb'y* 20, 1866.

W. YERGER, Esqr.

DEAR SIR: I wrote you on the 17 inst., in which proposed that Lyons might take up the Russell judgment against me, and I would give him credit on his note, dollar for dollar. On more mature reflection, I think I may be doing wrong, as I have no knowledge of the judgment being confirmed at Washington, and it may be that I get rid of the debt entirely. I presume Burwell is having it attended to, and he thought well of the chances of defeating them at the time. I must therefore decline having anything done in the premises until I learn further the situation of the claim, and also the situation of Lyons; also the property I sold him on which I have mortgage. If he is cultivating or renting it, the property is worth all the balance due on mortgage. The rents alone would soon, or in one year, the am't you are surety
63 for me. On these points you should have informed me. I will hold this note, $16,666 60, and many years' interest, at 8 per cent., always subject to this debt, provided the judgment is confirmed, until which let the matter rest as it is. I will return in April or May, and will write you from Louisville, Kentucky. Whenever a compromise is to be offered it should and must be through you as surety, knowing they will rely on your future prospects as a lawyer to make money and pay it. I am sorry you told Lyons of our understanding, as he will be

apt to let Russell know, or his attorney, the arrangement, and in that way defeat us in making a advantageous compromise.

Let me hear from you.

Y'rs truly,

R. CHRISTMAS.

Where is Mr. Burwell? I have written him very often, and never have heard where he is. He could perhaps tell you the situation of the Bonard judgment. Do write him for information, and oblige y'rs, &c.

R. C.

64 *Exhibit No. 4 to answer of William Yerger.*

Confidential. LIVERPOOL, *Feb'y 21st*, '66.

Mr. W. YERGER.

DEAR SIR: I wrote you on the 17 and 20 inst., since which I have received some information which causes me to countermand my proposition for Lyons to take up my debt or exchange dollar for in his paper. I have to-day written Burwell, who, I learn through my son, is at Vicksburg, to propose a compromise with Russell, which I presume he will effect. You may rest assured I will protect you with Lyons' note of $16,666 60 *cts.*, which is now over $20,000. This fact should not be known, to enable me to make a favorable arrangement. My son is now in Mississippi, and has possession of his plantations, and is cultivating or renting the same with Burwell and Manlove. I will be over in May, or as soon as the storms *is* over. Say nothing to Lyons; to do so would embarrass my intentions.

Yours, truly,

R. CHRISTMAS.

65 *Exhibit No. 5 to answer of William Yerger.*

LOUISVILLE, KY., *May* 12, 1866.

WILLIAM YERGER, Esqr.

DEAR SIR: On my arrival here I found the notes of Lyons under attachment. I left them in N. York, as I supposed, in the hands of a friend, A. O. Brannin, *and* honorable man, who I never owed a cent, to sell for cash. In this I was mistaken; he managed to find out some indebtedness of mine and get it transferred to him, thereby compelling me to transfer some $9,000 of this debt to him and others. I transferred the balance to my son, H. H. Christmas, who, you are aware, I owed a large trust debt for property sold, uses, and rents, given him by H. R. W. Hill in his lifetime. In doing so, I believe I have not lost sight of my purpose of protecting you from final loss; it shall be done, and I will try to satisfy you of this fact. I am now located at this place; should be pleased to hear from you, and the condition of my old suit, brother's heirs, which shall expect you to give particular attention, and oblige, your fr'nd,

R. CHRISTMAS.

66 *Exhibit No. 6 to answer of William Yerger.*

LOUISVILLE, *July 5th*, 1866.

W. YERGER, Esqr.

DEAR SIR: I wrote you some two weeks since, and to-day find my

retained in post office, having put revenue stamp on it instead of postage stamp. In reply to your rather complaining letter I replied, and again say, I have not lost sight of my obligations to you and Anderson, and have my plans of protection, though I learn by Mr. Martin the estate is insolvent, and he had lost $20,000 by it; but this does not lessen my obligations. I think in the mean time you should do all in your power to prevent my making sacrafices. The suit of Russell will not be heard until 1 December, before which much might be done to ward off the blow and enable me to compromise, which I am now endeavoring to do. I find you do not mention my suit in Issaquena, (brother's heirs,) and was not there at last term of court; and now allow me to complain a little, as you have never given this important suit the least attention, tho' paid $2,000 in advance. This suit might now be brought to favorable termination for me, if I could but get your attention. Tell
67 me, shall I have it or not? Have you examined if all the papers are saved? I learn Mr. Burwell was at court, but he, who I have also paid, says nothing about it.

Hoping soon to hear from you, I am, yours truly,

R. CHRISTMAS.

Exhibit No. 7 to answer of William Yerger.

LOUISVILLE, *Sept.* 28, 1866.

W. S. YERGER, Esqr.

DEAR SIR: I wrote you some month since respecting my suit, brother's heirs, in Issaquena Co., but as yet have received no reply. The fall terms being near at hand, it will be necessary to have some representative present. I wrote to know if you would attend. The Russell suit is set for trial at Washington, 1 December. I have the matter under consideration for compromise. Were there but one plaintiff, it could be settled, it appears, but unfortunately there are several. This debt will be last of your indebtedness paid. I learn Anderson's estate is insolvent. I think all are, south.

Let me hear from you, & oblige, yours truly,

R. CHRISTMAS.

68 And afterwards, to wit, on the 24th day of August, A. D. 1869, came the defendant Richard Christmas by his solicitors, and filed his answer to the bill of complaint in this cause; which said answer, with the exhibits thereto, are in the words and figures following, to wit:

In the circuit court of the United States and southern district of Mississippi.

JOHN W. RUSSELL ET ALS. *vs.* WILLIE LYONS ET ALS. } No. 8, N. S.—In chancery.

The separate answer of defendant Richard Christmas to the bill of complaint herein.

This respondent, for answer to so much of said bill as he is advised it is necessary for him to answer unto, answering, says that as to the charge in said bill that complainants, on the 25th day of May, 1860, recovered against respondent a judgment in the circuit court of the U. S.

for the district aforesaid for the sum of $5,639 13 debt, and $6,521 35 damages, with interest on the same at 6% per annum until paid, this respondent is advised by counsel, and so charges the fact to be, that no sufficient record of said pretended judgment remains on file in the said court, and therefore respondent denies that such a judgment was obtained, and calls for full proof.

69 Respondent admits that he sued out a writ of error to said pretended judgment, supposing the same to have been duly rendered, and entered into bond with the sureties, as stated in said bill; but respondent does not know what proceedings have taken place in said writ of error, and therefore does not admit that said pretended judgment has been affirmed, but calls for full proof. But if it shall appear that said pretended judgment has been affirmed, as charged in said bill, then this respondent charges that said confirmation has been fraudulently obtained by means of a false and fraudulent record of a pretended final judgment in said case, when in fact no such pretended judgment was ever rendered in said case; and this respondent files herewith a certified copy of the record of said pretended judgment, marked Exhibit No. 1 to this answer, from which it appears that no judgment of the court was ever rendered in the case.

And this respondent is advised by his counsel that the Supreme Court of the U. S. has no jurisdiction of a writ of error, except in cases where the circuit or district courts of the United States have rendered a final judgment; and so this respondent says that said pretended proceedings in said writ of error in said Supreme Court, if any such were had,

70 were coram non judici, and utterly null and void, and of no effect in law or equity.

And as to the charge in said bill that the final record of said judgment in said circuit court was lost or destroyed, this respondent is advised, and so charges, that no final record of said judgment was ever made in said court, and so respondent denies that the same was lost or destroyed.

And as to the charge in said bill that, by the pretended affirmance of said pretended judgment, the liability of the sureties in said writ of error bond became fixed, and said pretended judgment against this respondent final and conclusive, this respondent is advised by his counsel, and so charges, that the same is untrue in law and in fact.

This respondent is informed, and so charges, that, at the time said pretended judgment was alleged to have been affirmed, the said Warren P. Anderson, one of said sureties in said writ of error bond, was dead; that no judgment has ever been obtained against said W'm Yerger or said Warren P. Anderson, sureties on said writ of error bond; and that, inasmuch as the alleged proceedings in said pretended judgment in said Supreme Court were without jurisdiction and void, respondent denies that the liability of said sureties on said writ of error bond *were*

71 fixed thereby. And in this connexion this respondent charges that said sureties have a perfect defence to said writ of error bond, and as said sureties have never been called upon to pay, nor have they ever paid, any portion of said pretended judgment, that they have been in no wise damnified by said suretyship, and have no legal claims upon this respondent arising out of said suretyship.

Respondent further states that, at the time said Yerger and Anderson signed said writ of error bond, this respondent indemnified them by delivering to said Yerger a letter of credit of Martin, Cobb & Co., dated May the 23, 1860, authorizing respondent to draw on them for $15,000 between the 23 of May and first of October, 1860. Respondent, by vir-

tue of this letter of credit, drew on said Martin, Cobb & Co., on the said 25 day of May, 1860, for $13,000, in favor of W'm Yerger and W. P. Anderson, payable October the 1st, 1860; said draft, or the proceeds thereof, to be held by said Yerger and Anderson as indemnity against payment of said writ of error bond.

Respondent herewith files the receipt of said William Yerger for said draft and said letter of credit, and refers to the same as part of this answer, as Exhibit No. 2, made part hereof.

Respondent denies that said William Yerger called to his atten-
72 tion, by letters sent to him while in Europe, the subject of indemnifying said sureties; denies that said Yerger asked for or demanded by said letters any indemnity whatever on account of said suretyship; denies that he assigned or pledged to said Yerger a note on Willie Lyons for $16,666 60 as such indemnity.

Respondent admits that he felt great uneasiness about his own liability and that of said Yerger and Anderson on said Russell judgment, and that he voluntarily wrote said Yerger on that subject. Respondent's first letter on that subject was written from Liverpool, Eng., Oct. 13th, 1865, and in which these passages occur:

"I feel great uneasiness about your liability on the bond in the suit of Russell against me. I presume it will be decided against me as a matter of course, and how to pay it is a mystery. I am willing to give up all I have to pay it; but this is worthless, I am afraid." * * * * "I have ever held the Lyons note as sacred for the payment of this debt, and have it now in New York, endeavoring to sell it, with the mortgage, to pay this debt."

From this passage complainants, with the whole letter before them, garble these words: "I have ever held the Lyons note sacred for the payment of this debt."

73 From this extract they draw the deduction that respondent intended thereby to assign the note to said Yerger, when, in fact, the conclusion of the same sentence, in the same breath, without even a pause, shows that respondent was then endeavoring to sell said note in New York; and the whole letter is written with reference to the expectation that the Russell suit would soon be decided against respondent.

From my letter of Liverpool, Feb'y 20, 1866, complainants have garbled the following partial sentence: "I will hold this note, $16,666 60, and many years' interest, at 8 %, always subject to this debt, provided the judgment is confirmed."

From this complainants charge an intention to assign and pledge said note, whereas the whole letter expressly forbids and contradicts the idea of an assignment. Said letter is in the following words:

"LIVERPOOL, *Feb'y 20th*, 1866.

"W. YERGER, Esqr.

"DEAR SIR: I wrote you on the 17th inst., in which [I] proposed that Lyon might take up the Russell judgment against me, and I would give him credit on his note, dollar for dollar. On more mature reflec-
74 tion, I think I may be doing wrong, as I have no knowledge of the judgment being confirmed at Washington, and it may be that I get rid of the debt entirely. I presume that Burwell is having it attended to, and he thought well of the chances of defeating them at the time. I must, therefore, decline having anything done in the premises until I learn further the situation of the claim and also the situation of Lyons, also the property I sold him on which I have mortgage. If he is cultivating it, or renting it, the property is worth all the balance due

on the mortgage. The rents alone would soon, or in one year, [pay] the am't you are surety for me. On these points you should have informed me. I will hold this note, $16,666 66, and many years' interest, at 8 %, always subject to this debt, provided the judgment is confirmed, until which let the matter rest as it is. I will return in April or May, and will write you from Louisville, Kentucky."

On the following day respondent wrote again as follows:

"LIVERPOOL, *Feb'y 24th*, '66.

"Mr. W'M YERGER.

"D'R SIR: I wrote you on the 17th and 20th inst., since which I have received some information, which causes me to countermand my
75 proposition for Lyons to take up my debt, or exchange dollar for dollar in his paper. I have to-day written Burwell, who, I learn through my son, is at Vicksburg, to propose a compromise with Russell, which I presume he will effect. You may rest assured I will protect you with Lyons' note of $16,666 60, which is now over $20,000. This fact should not be known, to enable me to make a favorable arrangement. My son is now in Mississippi, and has possession of his plantation. * * * Say nothing to Lyons; to do so would embarrass my intentions."

Previous to these two letters, to wit, on the 14th of February, 1866, respondent had written as follows:

"I am willing to make a liberal arrangement with Mr. Lyons. Having been absent from the country for three years, I know but little of the situation of the people or the country, and you do not give me any insight into Lyons' situation or the property I sold him. The value of the land at present would be necessary for me to know, and if cultivated at this time. The note I am sure is not sold, and to-day I countermanded its sale at any price."

"Ask Lyons for a proposition."

"I could not safely send you Lyons' note by mail, as it is pay-
76 able to me or bearer; hence, if lost, might put me to much trouble. I will return to America in April or May."

In reply to these letters Mr. W. Yerger wrote as follows:

"JACKSON, *March* 20, 1866.

"R. CHRISTMAS, Esqr., *Liverpool.*

"DEAR SIR: A few days ago I rec'd letters from you, dated Feb. 14, 17, 21st. Of course, I will do nothing in the business with Lyons without your directions. I hope you may be able to make a good compromise with Russell. I presume no judgment was rendered in the Supreme Court in the case, as the court refused to try cases brought up from the insurrectionary States. Lyons is, I presume, amply solvent for the amount of your claim, as the land is worth the money. Land on the river has rented very high this year, from $10 to $15 per acre.

"Y'rs, &c.,

"W'M YERGER."

Respondent files this letter as Exhibit No. 3 to this answer.

This respondent, further answering, says that his original purpose in writing to said Yerger was to obtain, if possible, a settlement with

77 Lyons, in order to enable him to settle the Russell judgment, if the same was confirmed against respondent; but the same not having been confirmed immediately, gave respondent more time to effect his arrangements. He therefore countermanded all his proposals to said Yerger on this subject, and said Yerger acknowledged the receipt of said countermand, and agreed to be governed thereby; all of which will more fully and at large appear by reference to said original letters now in the possession of said Yerger, and which respondent demands to be produced on the trial of this case. Complainants have garbled from the foregoing letters two extracts of partial sentences, on which they rely to prove an assignment of a note of Lyons to respondent. Respondent has quoted the whole of the letters from which the partial sentences were garbled, and from which it appears this respondent merely promised to pay said Russell judgment out of the proceeds of said note in the event the same was confirmed, nothing more; no assignment was thereby made or intended to be made; and as to the charge in said bill that said Lyons' note for $16,666 60, referred to in said letters, was in the hands of a friend by the name of Brannin, in New York, respondent says that, at the time said letters were

78 written, this respondent had in the hands of said A. O. Brannin three notes of the said Lyons, all for the said sum of $16,666 66, each of the same date, for the same consideration, secured by the same mortgage lien on the same land, and payable to respondent or bearer, and only differed as to the time of maturity, being payable in one, two, and three years after the 20 day of December, A. D. 1859, and all past due at that time.

Respondent did not identify either of these notes in said letters to said Yerger, and did not deem it necessary to do so, as his purpose was not to assign or pass away the title to either of said notes, as he could use either of these as occasion might require in the settlement of said Russell judgment when it became necessary to do so. Two of them were wholly unpaid, and partial payment on one of them only.

Respondent denies that he excused himself for not sending the Lyons note, or either of them, to said Yerger as an indemnity to said Yerger and Anderson on said writ of error bond. His remark on this subject had reference to sending out the note to be used by said Yerger for respondent in effecting the proposed settlement with Lyons, and not as indemnity to Yerger. And as to all the other allegations of said

79 bill in reference to said pretended assignment and pledge of said note to said Yerger not heretofore specially denied or admitted, and inconsistent with the foregoing statement, respondent denies the same.

And said respondent, further answering, says that he arrived in New York from Liverpool about the first of May, A. D. 1866, and, upon enquiring for the said A. O. Brannin, with whom said Lyons' notes had been left by respondent some time in June, 1865, he found that said Brannin had gone to Louisville, Ky., and carried said notes with him. On the arrival of respondent in Louisville, he was informed by the said A. O. Brannin that, since his arrival in Louisville, the said Lyons notes had been attached by process of attachment in his hands from the chancery court of Louisville, Ky., in favor of Martin, Cobb & Co., of New Orleans, for the sum of $10,286 56, a certified copy of which attachment is herewith filed, marked Exhibit No. 4, and made part hereof, from which it appeared that respondent was indebted to said Martin, Cobb & Co. in said sum of $10,286 56. Of this sum the said Martin, Cobb & Co. had assigned to A. O. & J. L. Brannins the sum of four

thousand six hundred and ninety-five and $\frac{97}{100}$ dollars, with in-
80 terest from the 27th of March, 1866, at eight %, and the said Martin, Cobb & Co. offered to accept of $5,000, with interest from the 4th of October, 1865, for the balance of said debt of $10,286 56; and this respondent, having no other means at his command with which to pay said attachment lien on said notes, was compelled to compromise the same by allowing a lien on said three notes to said Brannins and said Martin, Cobb & Co.

And as to the charge in said bill that this respondent transferred said note of Lyons for $16,666 60 on a pretended consideration without any claim or demand had or made by the said Harry H. Christmas, and that this respondent devised this method to cover the debt due from Lyon, and place the same beyond the reach of creditors, this respondent denies each and all of these allegations, and states the fact to be as follows: The said Harry Hill Christmas was born on the 25 Dec., 1840. Said Harry R. W. Hill had been for many years an intimate friend of respondent and of his first wife, the mother of said Harry H. Christmas; and when born, requested that said infant be named for him, said H. R. W. Hill, to which this respondent and his said wife assented, and so named said infant child; and thereupon said Hill imported from Europe
81 a valuable set of silver and a superior double-barrelled fowling-piece, marked in the name of said Harry Hill Christmas, and as presented to him by said H. R. W. Hill, and did present the same to said infant son of this respondent.

Subsequently, in the year , the said H. R. W. Hill, by deeds of trust bearing date, the one 8th of June, 1848, the other the 21st Nov., A. D. 1849, and executed by himself and wife, conveyed to this respondent, in trust for the said Harry Hill Christmas, a valuable plantation and tract of land situated in Issaquena County, Missi., containing about thousand acres, and more particularly described in said deeds of conveyance filed herewith, marked Exhibits 5 and 6, and made part hereof.

Subsequently said Hill and wife, by another deed in trust, conveyed to respondent as trustee about acres more, making one body of land in contiguous numbers of about thousand acres of land, situated on the bank of the Mississippi River. Said last deed will be filed as Exhibit No. 7.

That in and by the terms of said trust this respondent was required to take possession of said plantation, and work or rent it out for
82 the benefit of respondent's son, and out of the rents and profits of the same pay the said Harry R. W. Hill the sum of thousand dollars, with interest thereon until paid; and after the payment of said sum respondent was to hold and work or rent said plantation for the use of said Harry Hill Christmas until he arrived at his majority, when this respondent was required by said trust to account to said H. H. Christmas for the rents, issues, and profits of said plantation, and for the proceeds of the sales of land therefrom, and to convey the balance by deed to said Harry H. Christmas, all of which will more fully appear from said deeds No. 5, 6, and 7.

And this respondent further states that, at the time said plantation was delivered to respondent in trust, it contained about nine hundred acres of well-cleared and tillable cotton land, of the best quality of Mississippi bottom cotton lands, and the balance was well timbered with oak, cypress, and other valuable timber. Said plantation had a gin-house, gin, negro quarters, and the general plantation improvements for a sufficient force to work the same.

Respondent further states that, in the year A. D. 1832, he married Mary Emeline Smith, daughter of Alexander Smith, of Williamson County, Tennessee; that, shortly after said marriage, said Alex-
83 ander Smith and wife, in consideration of love and affection for their said daughter, conveyed to respondent and his wife a valuable farm of acres, with valuable improvements thereon, situated in said Williamson County, Ten.; the said farm to be owned one-half by respondent, the other half for the separate use of the said Mary Emeline, his wife; and in the year A. D. 1840 respondent was offered $20,000 for said farm, but said Emeline and her father and mother objected, unless said Mary E. was secured by other property of equal value; respondent therefore agreed to convey to said Mary E. thousand dollars worth of slaves then on respondent's plantation in Warren County, Missi.; accordingly said farm was sold for said $20,000, and the money received by respondent; and subsequently, on the day of April, A. D. 1841, respondent conveyed to Benjamin D. Smith, trustee for said Emeline, fourteen slaves, 12 of them full hands at that time, and then on respondent's plantation in Warren County, for use of said Mary E., and respondent continued to use the same for said account. A copy of said deed in trust is herewith filed, marked Exhibit No. 10.

Respondent further states that, in the year A. D. 1840, the
84 day of August, D. L. Home, departed this life in Warren County, Missi., leaving a last will and testament, whereby said Home, after making some small money bequests, bequeathed to Mary E. Christmas, wife of this respondent, and William Hardeman Christmas, son of respondent and said Mary, the remainder of his estate, consisting of a plantation and about 60 negroes. A copy of said will is herewith filed, marked Exhibit No. 11, and made part hereof. This respondent held a mortgage on said plantation and negroes, which was finally paid up by a sale of the land, mules, crop of 1840, and by the hires of the said negroes, leaving the said negroes to be equally divided between said Mary Emeline and said William Hardeman Christmas, which said 60 slaves came to the possession of this respondent in the spring of 1841. Mary Emeline died in the spring of 1841; William Hardeman Christmas died in the same year, leaving said Harry Hill Christmas their sole heir at law, and whereby said Harry inherited all of said slaves of said Mary Emeline and her son William Hardeman, about seventy-four slaves in number, and about fifty-eight of them full hands. Said mortgage is herewith filed, marked Exhibit No. 12. Respondent held said two
85 lots of slaves in trust for said Harry Hill Christmas, from the summer of 1841 until September, 1862, and worked the same on the said plantations held in trust by this respondent for said Harry Hill Chrismas from year 1847 to 1862. About five years of the hires of said slaves from the Home estate were due this respondent in discharge of his said mortgage; the balance of the hires of said slaves were due said Harry Hill Christmas, say for fifteen years; and the hire of the fourteen slaves conveyed by the deed in trust to Mary Emeline Christmas were due from April, 1841, to 1862, say 21 years. These two lots of slaves would average about fifty-eight full hands, worth about $150 per annum each, and their hire in Sept., 1862, without estimate of their increase, amounted to the sum of $141,300, as follows:

Fourteen slaves *deud* to B. D. Smith, 12 hands, at $150 per an., twenty-one years	$37,800
46 slaves, Home's estate, 15 years	103,500

Interest at 6 per cent. on each year's hire.

When respondent received said plantation in trust as aforesaid in the year 1847, it contained about nine hundred acres of cleared, tillable cotton lands, of the best quality of Missi. bottom. There was also about the same quantity of land that had been deadened for several
86 years, and in order to take in. Respondent cleared up this deadening as rapidly as possible, and in 1862 had sixteen hundred acres in cultivation.

Respondent during the war lost his plantation-book usually and annually kept on the place, and cannot accurately state the exact number of acres in cultivation each year. But the following estimate, made from recollection, is about the number of acres and the value of the rents:

In 1848, 900 acres in cultivation, $5 per acre	$4,500
" 1849, 1,000	5,000
" 1850, 1,050	5,250
" 1851, 1,200	6,000
" 1852, 1,200	6,000
" 1853, 1,250	6,250
" 1854, 1,300	6,500
" 1855, 1,400	7,000
" 1856, 1,500	7,500
" 1857, 1,500	7,500
" 1858, 1,600	8,000
" 1859, 1,600	8,000
" 1860, 1,600	8,000
" 1861, 1,600	8,000
87 These rents to be credited with the cost of clearing up 700 acres of deadened land, say $10 per acre	$7,000
Also 13 cabins, a new gin-house, and engine, say about and some other improvements	7,000
	$14,000

M'ch 21, 1846.—Cash paid Hill for Allen tract	$4,000
Nov. 21, 1849.—Cash paid Hill for McCraven tract	5,000
May 31, 1852.—Cash paid Hill for Maxwell tract	500

Respondent further states that, under the power contained in said trust to sell lands, this respondent, on the day of April, A. D. 1851, sold to one William Myers seven hundred and nineteen acres of said land for the sum of $10,780, as by reference to respondent's deeds to said lands will more fully appear, copies of which are herewith filed, marked Exhibits No. 13[1], 13[2], and 13[3]. Also sold to Sam'l Moore six hundred acres for the sum of $7,476, paid on the day of , A. D. 1853, all of which will more fully appear from the deed of the commissioner in chancery, who finally sold said land to pay said purchase-money, herewith filed, marked Exhibit No. 14. Also sold to
88 William Towner, for the sum of $8,000, 580 acres of said land, all of which will more fully appear by reference to respondent's deed to the same, herewith filed, marked Exhibit No. 15. Also sold to Geo. N. Parks fractional section 13, T. 10, R. 9 west, containing about one hundred and fifty acres, for the sum of $2,000. See Exhibit 15½.

During the same period respondent sold from said plantation ten

thousand cords of ash firewood, worth in the woods $1 per cord; also sold five thousand dollars' worth of cypress timber. An account of the principal and interest accruing from the sale of said land, cordwood, and cypress is herewith filed, marked Exhibit No. 16.

Respondent further states that the said Harry Hill Christmas arrived at his majority on the 25 December, 1861; that, in August, 1862, the late war was progressing; the said Harry, being then in the confederate army at Corinth, Missi., obtained leave of absence and came to see respondent, then on said plantation in Issquena County, and demanded of this respondent a settlement of said trust estate. The Federal Army was then passing down the Missi. River in front of said plantation with their gunboats and transports, occasionally landing at planta-
89 tions and carrying off slaves and other property. The said enemy landed at said trust-estate plantation, and took off about 20 slaves, all men, but which ran away and came home again.

It was therefore agreed, by and between the said respondent and the said Harry, that respondent should take all the slaves, mules, wagons, and teams, &c., belonging to the said trust estate of Harry, and all of the slaves then belonging to respondent, in all one hundred and thirty slaves, sixty mules, ten wagons, and outfits for ten mule teams, and carry the same to Texas for safety.

The sixty mules and wagons and about one-third of the negroes were the individual property of respondent, and the balance the property of the said Harry. In this confused condition of things it was considered important to move with the negroes at once, for fear of losing them all; and there was therefore no time for a full settlement of said trust estate.

Respondent had previously sold to Willie Lyons a plantation for about eighty thousand dollars, $30,000 in cash, and balance in three notes of $16,666 66 each, all of which notes respondent then had
90 and held, and are the same notes hereinbefore referred to, and all of them made payable to bearer, but credited with the sum of about $12,327; the balance of said three notes remaining wholly unpaid. And as respondent was largely indebted to said Harry on account of said trust estate, the amount of which could not then be ascertained, it was agreed that respondent should assign and deliver to said Harry said three Lyons' notes above described as a partial payment for said indebtedness, and that said respondent should take said slaves, mules, wagons, and outfit for the same, and provisions, and some furniture, and go to Texas, and hold or dispose of said property for the joint account of said Harry and this respondent; this respondent to bear all expenses of this expedition to Texas, and give his undivided services and attention to the slaves; the said Harry, being compelled to serve in the confederate army, could not give attention to his own estate.

Accordingly, in the month of August, A. D. 1862, this respondent made to said Harry a written assignment of said three notes, and delivered said assignment and said three notes to the said Harry Hill Christmas for the consideration aforesaid.

91 Subsequently preparations were made for the journey to Texas, but, by reason of the presence of the enemy in the Mississippi River, we did not get over the river until about the twentieth day of September, A. D. 1862, when respondent and his family, with said negroes, mules, &c., began said journey for Texas.

Respondent arrived in Burleson County, Texas, in Nov. or Dec., 1862. Said Harry rejoined the army at Houston, Texas.

Respondent rented a small plantation as a temporary home for him-

self, family, and slaves; had about two hundred acres cleared, and raised chiefly corn, and a few bales of cotton in 1863 and 1864.

Respondent became satisfied, as the war progressed, that the slaves would be finally lost. He therefore commenced trading the same for cotton or money, as occasion presented. These operations were attended with great expense and loss. Respondent paid as high as one-half the cotton for permission of the confederate authorities to sell the balance, and much of the cotton was stolen.

In November, 1864, respondent had sold about one hundred and fifteen of the negroes and the mule teams, the net proceeds of which was
92 three hundred and two bales of cotton, then in Matamoras, and about twelve thousand six hundred and ninety dollars in money. The cotton was shipped to Liverpool, and sold in October, 1865, for five thousand nine hundred and ninety-nine pounds three shillings seven pence.

The net proceeds of the money and cotton received by respondent for the slaves and mules sold in Texas was about forty thousand dollars, one-half of which belonged to the said Harry H. Christmas; the balance of the slaves were lost by emancipation in Texas. Respondent reinvested for his own account $38,000 of this sum in cotton at 17 to 21 pence per pound—130 bales purchased; balance of the sum invested on a margin, giving respondent control of about 630 bales, according to recollection, accounts being lost. Instead of raising in price, as was expected, cotton fell as low as 8 pence per pound.

Respondent made an arrangement with his merchants in Liverpool, in 1866, to hold said cotton for six months, in the hope that cotton would rally again and save respondent harmless in said investment. In this condition of things respondent returned to Louisville, Ky., about the first of May, 1866, leaving said cotton unsold, and with an ar-
93 rangement to hold the same for six months. While respondent was in Matamoras, in January, 1865, respondent heard from various persons that his son, H. H. Christmas, had died in the army, and one gentleman reported to respondent that he saw the said Harry H. buried.

Previous to this time the said Harry informed respondent by letter that he had sent a package of valuables, inclosing said three Lyons' notes for $16,666 60 each, to Matamoras, to the care of Josa San Roman, a merchant of that city, to be delivered to respondent on his arrival there for safe-keeping. Respondent accordingly received said three notes at Matamoras, and, believing that said Harry was dead, respondent went from Matamoras to Havana, and thence to New York, where he met with A. O. Brannin, with whom respondent left said three notes as his own property, with power to sell the same at fifty cents on the dollar, if no greater price could be had. While respondent was in London, he met with General Walker of the Texas army, with whom said Harry had served as a member of his staff, and said Walker informed respondent that said Harry was not in fact dead, and that said report was wholly untrue. Said report originated from the
94 death of a man by the name of Chrisman, not Christmas, and hence the mistake of respondent in treating said notes as his own property while in the hands of Brannin.

When respondent arrived in Louisville, Ky., in May, 1866, he found said notes had been attached by Martin, Cobb & Co., as hereinbefore stated. Respondent also met with his son, said Harry H. Christmas, who claimed said notes, and threatened to interplead and claim the same by virtue of the said assignment and delivery to him in August, A. D. 1862.

In this perplexed situation respondent prevailed on said Harry to allow Martin, Cobb & Co., and their assignees, A. O. and J. L. Brannin, to receive the sums claimed by them from the proceeds of said notes, this respondent and the said Harry supposing that the attachment lien of said Martin, Cobb & Co. would take legal precedence of the said assignment to said Harry; and thereupon this respondent, after obtaining the assent of said Harry to this arrangement, made a formal notarial assignment of the said notes to said Harry, subject to the payment of four thousand six hundred and ninety-five dollars and seven cents
95 to said Brannins, and five thousand dollars to said Martin, Cobb & Co., as before stated. Said assignment is herewith filed, marked Exhibit No. 16½ to this answer.

And thereupon the said Harry executed and delivered to this respondent a receipt for the balance due on said Lyons' notes, after deducting the credits on the same and the payments to be made by agreement of the said Harry to said Martin, Cobb & Co. and said Brannins. Said receipt is for the sum of $48,117, the estimated balance then due on the said notes, to be credited by said Harry on the debt of respondent to said Harry by reason of said trust estate. Said receipt is herewith filed, marked exhibit No. 17 to this answer.

Subsequently, on the day of , 1866, respondent and said Harry compromised and settled all matters connected with said trust estate. The last assignment of said notes to said Harry H. was made on the 9th of May, 1866. On the 12th of May respondent wrote said William Yerger, informing him of the transaction and the circumstances attending the same; and also that respondent had not lost sight of his purpose of protecting him from final loss.

Again, on the 5th July, 1866, respondent wrote said Yerger:

96 "I have not lost sight of my obligations to you and Anderson, and have my plans for protection."

At the date of these letters the Russell judgment was undetermined on writ of error, and respondent hoped to reverse the same; he also had invested in Liverpool $38,000 in cotton, on a margin, which he was holding with the expectation of an advance in cotton and the realization of a large profit; but in this hope respondent was ultimately disappointed. Cotton did not advance, as was expected, and respondent was finally forced to sell at a sacrafice of the whole sum invested, less the sum of about $1,500. This occurred in October, 1866. The writ of error in the Russell judgment was still undetermined. The said William Yerger made no objection or complaint about the said assignment of said Lyons' notes, although informed of the facts as above stated.

And as to the charge in said bill that respondent procured a settlement of said notes with said Lyons in favor of his son Harry, &c., this respondent denies all the charges in said bill on this subject. Respondent knows nothing of said settlement, except from information derived from said Harry H. and said Burwell, who represented all
97 the parties to said settlement; said settlement was made on the 22 of June, 1866, at Vicksburg. Respondent was then in Louisville, and knew nothing of the terms of said settlement until after the same occurred. Respondent was afterwards informed by said Harry that Lyons refused to pay the whole balance due on said notes, representing himself as unable to do so by reason of his losses during the war. There was due on said notes, after deducting the two payments, (say $12,327 19,) about $57,887 15.

Of this sum Lyons paid to Martin, Cobb & Co. and said Brannins about	$10,000 00
To H. H. Cristmas about	8,000 00
And gave the latter two notes for $8,339 90 each, say	16,679 80
Total	$34,767 77
Leaving a balance unpaid of	$23,119 38

which sum was released, as respondent is informed.

This respondent, as the father of said Harry, would never have advised such a settlement, as the lands mortgaged to secure the notes were worth the whole sum due; and, as respondent at the date of the transfer of said Lyons' notes to Harry owed said Harry on said trust estate a large sum of money, he was anxious to reimburse him as
98 far as these notes would do so.

Respondent is informed by counsel, and so charges, that this claim of said Harry against respondent, arising from said trust estate, was entitled to a preference over ordinary creditors, and especially over the claim of the said complainants, who obtained their judgment on a forged note, by means of fraud and perjury.

Respondent denies that said transfer to said Harry was a device to cover the debt due from said Lyons, and place it beyond the reach of creditors, as untruly stated in said bill. And as to all other charges in said bill in reference to said assignment of said Lyons, and the motives of respondent in relation thereto, not herein specially denied, and contrary to the foregoing statement of the same, respondent denies the same as utterly untrue. Respondent denies that he has any interest in the fund in litigation by complainants' bill, or the notes enjoined thereby.

Mary E. Christmas, present wife of respondent, is absent in Europe, and has a separate estate in Kentucky; Harry H. Christmas, his son, is absent in California; and respondent has written powers of attorney from each of these parties to act for them in relation to their prop-
99 erty and business arising therefrom, but not otherwise. Said powers of attorney will be filed if required. Respondent denies that he procured suits to be instituted on said notes at law or in equity in the circuit court of the United States against said Lyons in favor of said Harry and said Mary E., or said Payne, Huntingdon & Co.; denies that said John D. Freeman was his agent or attorney for that purpose; denies that respondent and his son, Harry, deposited said first note for $8,339 90 with Payne, Huntingdon & Co. for advances or loans, but is informed and believes that said Harry H. did make said deposit in person, and did employ said Freeman, by a special contract with him, to bring said suits, the one for his own use, the other for the use of said Payne, Huntingdon & Co.

Respondent is informed, and believes it to be true, that said Harry H. obtained judgment against said Lyons on one of said notes, for $8,868, Nov. 13, 1868, and that execution issued thereon, as stated in said bill; admits that, since the said suit was commenced for the use of Payne, Huntingdon & Co., their interest in said note has been transferred to
100 said Mary E. Christmas; charges that the said Mary E. has paid to said Payne, Huntingdon & Co. the sum of about $4,000, principal, interest, and costs due them by said Harry H. Christmas, and to secure which said Harry H. Christmas deposited said note with them as collateral; all of which will more fully appear by reference to the proceedings and proof in said chancery case, referred to in complainants' bill, No. —.

Respondent denies that the transfer of said note to said Mary E. Christmas was without actual consideration. On the contrary, respondent states that Harry H. had become indebted to Payne, Huntingdon & Co. in the sum of about $3,500 for advances to enable him to carry on his plantation during the year A. D. ; and in consideration that said Mary E. would pay this debt for said Harry H., said Harry H. transferred said note to said Mary E., and said written transfer is on file in the deposition of this respondent in the chancery case of H. H. Christmas et als. vs. said Willie Lyons, now of the records of this court; and the same is hereby referred to.

Respondent further states that said Mary E., in order to pay
101 said debt to Payne, Huntingdon & Co., amounting in all to about $4,000, inclusive of costs and charges, was forced to sell real estate at about half its value to raise said money, and so said Mary paid full consideration for said note; denies that the transfer of said note to said Mary E. was in fraud of creditors or the rights of complainants; denies that said Mary E. or said H. H. Christmas knew of the alleged indebtedness of respondent to complainants, or of the alleged assignment to Yerger and Anderson, or of any fraudulent purpose of respondent to defraud creditors; denies that any fraudulent purpose existed; denies that respondent intended to keep said fund for the benefit of himself and family; denies that any of said transactions of respondent were fraudulent or "colorable;" denies that said two notes for $8,339 90 each were renewals of a former note of said Lyons for $16,666 66, which had been pledged or assigned by respondent to said William Yerger, as untruly stated in said bill; denies that they were given in renewal of any one of said notes, but to secure a general arbitrary balance as a compromise and settlement of all three of said notes, as hereinbefore stated.

102 Respondent further states that, on the 10 day of May, A. D. 1866, he conveyed to said Harry H. Christmas the residue of said trust estate not heretofore sold, and said Harry H. Christmas went into possession of the same. Said deed is herewith filed, marked Exhibit No. 18; also a supplemental deed, No. 18½. And on the same day respondent compromised and settled with Harry H. Christmas all his indebtedness to said Harry H. on terms set forth in Exhibit No. 19, hereunto attached.

Respondent admits his present inability to pay all his debts; admits that, on the day of , A. D. 1868, he filed his petition in the district court of the United States, at Louisville, Ky., to be declared a bankrupt, and that thereupon such proceedings were had that, on the 29 day of October, 1868, he was finally discharged in bankruptcy, and of which proceedings complainants had due notice, and are bound thereby.

Respondent herewith files a copy of said discharge in bankruptcy, and pleads the same in abatement of this suit, and in discharge of the judgment of complainants. Said certificate of discharge is herewith filed, marked Exhibit 20.

103 Respondent states that, at the time he made said settlements with Harry H. Christmas and Martin, Cobb & Co. and said Brannins, to wit, in the month of May, A. D. 1866, he hoped to be able to compromise and settle with all his creditors; the Russell judgment was his principal debt, and as that was obtained on a forged note, and was without consideration, as complainants knew, he hoped to compromise the same for a small sum from the proceeds of his cotton in Liverpool.

This hope was dissipated by the loss of that large fund, less about $1,500, in October, 1866, as before stated.

Respondent files herewith the deeds of Alexander Smith and wife to R. Christmas and wife, Exhibit No. 21, and of R. Christmas and wife to R. A. Gentry, Exhibit 22, and power of attorney of H. H. Christmas to this respondent, as Exhibit No. 23.

And this respondent, having fully answered all the allegations of said bill, prays to be hence discharged, with his proper costs and charges most wrongfully sustained.

JOHN D FREEMAN,
Sol. for Respondent.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

104 Personally appeared before the undersigned, United States commissioner for the southern district of Mississippi, Richard Christmas, the above-named respondent, who, on oath, states that the matters and things in said answer stated as of his own knowledge are true, and those stated on information and belief he believes to be true.

R. CHRISTMAS.

Sworn and subscribed before me this 15th day of June, A. D. 1869.

GEO. A. SMYTHE,
U. S. Commissioner.

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clerk.*

Exhibit No. 1 *to answer of R. Christmas.*

In the circuit court of the United States for the southern district of Mississippi.

Be it remembered that, on the 25th day of May, A. D. 1860, before the Honorable S. J. Gholson, district judge, the following proceedings were had in the matter of—

JOHN W. RUSSELL ET AL.
vs. } 52.
RICHARD CHRISTMAS.

Judgment for plaintiffs on plea of nul tiel record. And a jury being called, came, to wit, J. L. Morris, Jas. McRae, W. D. King, E. Jones, N. Morrison, M. C. Cheatham, W. F. Gartley, J. H. Burns, W. H.
105 Simmons, E. Houston, Calvin Tilly, J. P. O'Reiley; who, being sworn, &c., say, upon their oaths, they find for the plaintiffs, on the issue joined, the debt in the declaration mentioned, and assess the damages, by reason of the detention thereof, at six thousand five hundred and twenty-one $\frac{35}{100}$ dollars.

Bill of exceptions tendered by defendant, signed, sealed, and ordered by the court to be made a part of the record herein.

Judgment on verdict for debt, five thousand six hundred and thirty-four dollars and thirteen cents; damages, six thousand five hundred and twenty-one dollars and thirty-five cents, with interest on said sums, at six per cent. per annum, and costs.

Writ of error bond tendered in open court, with William Yerger and

Warren P. Anderson sureties therein. Writ of error bond approved by the court, and writ of error and citation granted.

On motion of defendant, it is ordered by the court that a credit of two hundred dollars, with interest from March 1st, 1841, be entered on the aforesaid judgment, said credit appearing on the record filed here-
106 in, and having been omitted by mistake of the jury.

I, George T. Swann, clerk of said court, do hereby certify the foregoing to be a full, true, and correct transcript from the minutes of said court of all the proceedings had and done in said cause as the same remains of record in said court; and I do further certify that the minutes of Friday, May 25th, 1860, are not signed by the presiding judge.

Given under my hand, and seal of said court affixed, this May 18th, A. D. 1869.

[L. S.] GEO. T. SWANN, *Clk.*

Filed and ent'd Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 2 to answer of R. Christmas.

JACKSON, *May* 25, 1860.

Rec'd of Richard Christmas his draft of this date for $13,000 upon Martin, Cobb & Co., in favor of W. Yerger and Warren P. Anderson, payable on the 1st day of October next, together with letter of credit of Martin, Cobb & Co., dated May 23rd, 1860, authorizing said Christmas to draw on them to the extent of $15,000 between 23rd May and 1st October, 1860, in such sums as suited his convenience, which draft and letter of credit are received by me to be held as collateral security
107 for Warren P. Anderson and myself, to indemnify us against our liability as sureties of said Christmas on a writ of error and supersedeas bond this day executed, in order to take out a writ of error and supersedeas to the Supreme Court of the United States from a judgment rendered in the circuit court of the United States for the southern district of Mississippi, at Jackson, on the 25th day of May, 1860, for $12,155 48, in favor of John W. Russell et al. against said Richard Christmas; it being understood that if said case is not decided in the Supreme Court of the United States by the maturity of said draft, the said Christmas shall give a like acceptance in renewal, to be held for the same purposes, or, if said draft is not given in renewal, then the money on the draft now rec'd to be collected and held by said Yerger as collateral security as aforesaid.

Jackson, May 25th, 1860.

W. YERGER.

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 3 to answer of R. Chrismas.

JACKSON, *March* 20, 1866.

R. CHRISTMAS, Esqr., *Liverpool.*

108 DEAR SIR: A few days ago I rec'd three letters from you, dated Feb'y 14, 17, and 21. Of course, I will do nothing in the business with Lyon without your directions. I hope you may be able to make a good compromise with Russell. I presume no judgment was rendered

in the Supreme Court in the case, as the court refused to try cases brought up from the insurrectionary States. Lyon is, I presume, amply solvent for the amount of your claim, as the land is worth the money. Land on the river has rented very high this year, from $10 to $15 per acre. As a general rule, the parties renting will make a losing business, as an overflow seems certain now. The water is very high and rising, and has broken through at Young's Point and below Providence. The cut-off at Terrapin Neck has made. As your son is in Issaquena, he can give you more information of the country than I can. Mr. Burwell is in Vicksburg.

Y'rs, truly,

W. YERGER.

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Cl'k.*

109 *Exhibit No. 4 to answer of R. Christmas.*

COMMONWEALTH OF KENTUCKY,
Louisville Chancery Court, sct:

Pleas before the Hon. Henry Pirtle, the chancellor and sole judge of the court aforesaid, held at the court-house, in the city of Louisville, on the 11th day of May, 1866.

Be it remembered that heretofore, to wit, on the 25th day of April, 1866, came pl'ff by counsel, and filed in the clerk's office of said court his original petition herein. Said petition is in words and figures as follows, to wit:

Parties.

Louisville chancery court.

THOMAS J. MARTIN, DANIEL COBB, JOHN DOLhonde, and John D. Cobb, plaintiffs,
against
RICHARD CHRISTMAS, DEFENDANT.

Petition.

The plaintiffs state they were late partners, under the firm style of Martin, Cobb & Co., doing business in New Orleans, Louisiana, as commission merchants and factors, and that the defendant is justly indebted to them in the sum of ten thousand two hundred and eighty-six
110 $\frac{56}{100}$ dollars for balance of account rendered, cash to defendant for commissions for accepting defendant's draft at his request, and on balance of cash advanced by plaintiffs to defendant at his request; for money paid and advanced by plaintiffs to pay defendant's drafts, and freight and expenses on defendant's merchandise and supplies, to pay invoices of pork, sugar, flour, candles, &c.; for advertising; for invoices of merchandise and supplies, bagging, rope and twine, lard oil, gunny bags, molasses; to cash paid to defendant; and for interest on money advanced and paid by plaintiffs for defendant, all of which was so done at the instance and request of defendant, and particulars of which are set out in an account herewith filed, together with the credits to which the defendant is entitled, and leaving due and unpaid the sum above mentioned,

together with interest from the first day of October, 1865. All said transactions were done in New Orleans, Louisiana; and by the law of that State the plaintiffs are entitled to receive and charge interest at the rate of eight per centum per annum. Plaintiffs state that their claim against the defendant is of the nature above set forth, and that it is just; that they ought to recover thereon $10,286 56, with inter-
111 est from 1st Octo., 1865, at eight per cent. per annum; and that defendant is a non-resident of this State, but now has property, choses in action, or money within the jurisdiction of this court. Wherefore they pray for an attachment against the property of the defendant; and that the garnishees summoned be compelled to answer; and that the property, choses in action, and money attached be subjected to the payment of plaintiffs' and interest; and for all other proper relief.

W. R. THOMPSON,
For Pl'ffs.

Thomas J. Martin, one of the plaintiffs, says he believes the statements of the foregoing petition are true.

THO. J. MARTIN.

Subscribed and sworn to before me by Tho. J. Martin this 25th day of April, 1866.

J. T. SWEENY, *D. C. L. C. C.*

Atta. gr't'd for $10,730. Bond in 21,400 00. April 25, 1866.
J. T. SWEENY, *D. C.*

Said bill of particulars is as follows:

Col. R. Christmas in account-currant with Martin, Cobb & Co.

112 DR.

		Years.	Days.	Int.	Am't.
1861.					
Ap'l 10	To balance per acc't-current rend'd, cash, 15th April, 1861	4 yrs..	169	643 25	1,799 10
"	" commission for accepting y'r dr'ft fav. of William Yerger, $13,000, 5 mo's, from Nov. 1, '60	4 yrs..	334	128 12	325 00
"	" commission for accepting 2 dr'ft fav. J. W. Polk, $4,000 & $2,000, 8 mo's, from 21 March, 1861	4 yrs..	194	54 47	150 00
"	" paid draft fav. Ducoreman and Gunther	..do ..			67 15
"	" paid Mrs. Charlotte Levy's bill	..do ..	174	71 78	132 65
15	" dr'ft fav. W. H. Stevens & Stewart	..do ..			181 25
"	" " " J. A. Peale & Co	..do ..			200 00
"	" " Wright & Allen for 11 doz. wool hats	..do ..	169	164 83	79 50
16	" am't ord. to y'r debit by Cobb, Manlove & Co	..do ..			82 06
"	To dr'ft fav. Isaac E. Nicholson & C	..do ..	168	140 07	310 00
18	" st'r Mary E. Keene, up fr't bill	..do ..	166	90	2 50
3	" " dr'ft fav. Mary E. Keene	..do ..	151	35 36	100 00
4	" " " " A. L. Case	..do ..			300 00
"	" invoice 25 bbl. mess pork	..do ..	150	292 21	527 36
8	" p'd st'r Quitman fr't on machinery	..do ..	146	3 53	10 00
9	" " Mary Keene " " 25 bbls. pork	..do ..	145	8 81	25 00
15	" " Leeds & Co.'s bill of castings	..do ..	139	108 07	308 17
16	" invoice sugar, flour, candles, &c	..do ..			302 98
"	" am't p'd Cobb, Martin & C., New York, for adv't for a governess	..do ..			4 00
"	" p'd dr'ft of Mrs. M. E. Christmas	..do ..	138	177 79	200 00
22	" st'r Quitman, fr't on supplies	..do ..	132	5 24	14 75
June 3	" " dr'ft fav. Cobb, Manlove & Co	..do ..	120	34 67	100 00
4	" invoice of Martin & Co., *L'riler*, May, 16	..do ..	119	21 83	62 73
5	" p'd Mecham & Galbraith's dr'ft fav. Putnam & Co	..do ..	118	138 49	400 00
20	" invoice bagging & rope & twine	..do ..	103	374 44	1,092 20
26	" p'd st'r Quitman, fr't on above	..do ..	97	21 18	61 63
July 6	" invoice negro shoes	..do ..	87	74 65	219 98
22	" p'd st'r Hill, fr't on above	..do ..	71	84	2 50
23d	" dr'ft on Martin & Co., cash, July 15, '61	..do ..	70	16 78	50 00
27	" am't sent by Martin & Co. to Mrs. Christmas, at Grayson's Springs	..do ..	66	33 47	100 00

Sept. 11	To invoice 5 gal's lard oil	..do ...	20	3 24	9 95
Oct. 2d	" p'd st'r Quitman, fr't on above	3 yrs..	364	16	50
12	" fr't & expenses on 2 bales gunny bags from Shiloh Place	..do. ..	354	11 79	36 89
31	" p'd you nett proceeds of y'r note for $600, due 3 M'ch, 1862 discounted in Citizens' Bank	3 yrs..	335	164 86	583 47
Nov. 5	" p'd Jackson & Morrison for 5 sacks salt	3 "...	330	7 83	25 25
21	" p'd Mrs. Cassiday, teacher	3 "...	314	6 20	20 00
30	" invoice 3 barrels molasses	3 "...	305	8 00	26 00
Dec. 12	" p'd st'r Mary Keene, fr't on above	3 "...	293	92	3 00
19	" " protest fees on 2 acceptances of R. W. Estlin & Co. of 25452⁰ each	3 "...	286	2 12	7 20
114 1862					
March 3	" p'd to Citizens' Bank y'r note due to day	3 "...	212	172 87	600 00
Apr'l 23	" to invoice sugar, beef, & lard	3 "...	101	101 76	423 74
May 15	" p'd st'r J. Walsh, freight on above	3 "...	139	5 15	18 75
1865.					
Oct. Oct. 1	" bal. of int. in our fav. to date				2,552 87
" "	" commission on cash balance this day, $10,035 66, *a* 2½ %				250 90
				3,035 68	11,769 03

CREDITS.

		Years.	Days.	Int.	Am'ts.
1861.					
June 13	By am't ordered to your credit by Cobb, Manlove & Co.	4 yrs..	110	137 78	400 00
Sept. 9	" received for 11 bales gunny bags, 275 y., 15c.	4 "...	22	134 01	412 50
11	" rec'd for 1 bale do. from st'r Mary Keene	4 "...	20	11 81	30 25
Octo. 31	" proceeds of y'r note for $600, in our fav., at 4 mo's from Octo. 30, '61, discounted by Citizens' Bank, for supplies	3 yrs..	335		583 47
"	" rec'd of you to purchase salt	3 "...	335	191 50	25 25
Nov'r 28	" collected of Judge Price	3 "...	307	7 71	25 00
1865.					
Octo. 1	" balance of interest			2,552 87	
"	" balance of account carried to debit side				10,286 56
				3,035 68	11,769 03
1865.					
Octo. 1	To balance to your debit, cash, this day				$10,286 56

115 Bond executed on 25th April, 1866, is as follows, viz:

Bond.

THOMAS J. MARTIN, DANIEL COBB, JOHN DOLHONDE, and JOHN D. COBB, plaintiffs, *vs.* R. CHRISTMAS, DEFENDANT. } Bond in Louisville chancery court.

We undertake that the plaintiffs, Thomas J. Martin, Daniel Cobb, John Dolhonde, and John D. Cobb, shall pay to the defendant, R. Christmas, the damages, not exceeding $21,400 00, which he may sustain by reason of the attachment in this action, if the order therefor is wrongfully obtained.

April 25, 1866.

CHARLES D. JACOB.
THO. J. MARKER.

Attest:
J. T. SWEENY, *D. C. L. C. C.*

Summons, attachment, and 3 copies issued, on which marshal made following return:

Attachment.

The marshal is directed to attach and safely keep the property of the

defendant, R. Christmas, not exempt from execution, sufficient to satisfy plaintiffs' claim of $10,730 00 for debt and probable cost; also to summon the garnishees to answer in the action on the return day hereof, and to make due return thereof.

HARRY STUCKY, *Clk*,
J. T. SWEENY, *D. C.*

116 *Return on summons.*

Not found in Jeff. Co., and no property found.
N. B. GAULT, *D. M. L. C. C.*

And at a court held for the court aforesaid on the 27th day of April, 1866—

Ordered to appear.

The non-resident defendant, R. Christmas, is hereby warned and ordered to appear and answer herein within sixty days.

A. G. Booth app't'd to defend.

And A. G. Booth, an attorney of this court, is appointed to defend for him—

And at a court held for the court aforesaid on the 11th day of May, 1866—

Ord. discharged and suit dismissed settled.

This day came defendant by counsel, and filed a written order herein from W. B. Thompson, attorney for plaintiffs. And thereupon it is ordered that this cause be, and the same is hereby, dismissed settled. And it is further ordered that in this cause the attachment be, and the same is hereby, discharged.

Said order is as follows, viz:

Order.

This case is to be dismissed satisfied, and the attachment discharged, by agreement of parties.

MARTIN, COBB & CO.,
Per W. R. THOMPSON, *Att'y.*

117 COMMONWEALTH OF KENTUCKY,
Louisville Chancery Court, sct:

I, Thomas W. Thompson, clerk of the court aforesaid, do certify that the foregoing (9) nine pages contain a full and perfect transcript of the record in the case of Thomas J. Martin and others against R. Christmas, as the same is now of record and on file in said court.

Witness my hand and the seal of said court this 7th day of June, A. D. 1869, and in the 78th year of the Commonwealth of Kentucky.

[L. C.] THOMAS W. THOMPSON,
Clk L. C. C.

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118 I, Thomas B. Cochran, chancellor of the Louisville chancery court, in the State of Kentucky, do certify that Tho's W. Thompson, whose name is signed above, is the clerk of said court, and was such at the time of making his certificate, and that his attestation is in due form.

Witness my hand this day of June, A. D. 1869.

T. B. COCHRAN,
Chancellor Lou. Ch'y Court.

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 5 to answer of R. Christmas.

Copy.

H. R. W. Hill to Richard Christmas, trustee—deed to land.

Whereas I purchased, under a decree of the superior chancery court at Jackson, the interest of Richard Christmas, being two-thirds of four-fifths, in the "Cocke Plantation," hereafter described:

And whereas I also purchased from Mrs. Margaret Allen her interest in said place, being one-third of four-fifths, for which I paid her the sum of four thousand dollars, so that I now am the owner of an undivided four-fifths of said place:

And whereas it is my desire to present by my of gift to
119 Harry Hill Christmas, son of Richard Christmas, the interest I purchased under the decree against his father, which decree I obtained for a debt due to me by said Richard Christmas.

And whereas I desire to convey for his benefit and interest the residue of my interest purchased of Mrs. Allen, upon payment of the amount I paid for the same, and interest thereon:

Now, therefore, this indenture, made and entered into this 16th day of October, 1848, between Harry R. W. Hill, of the one part, and Richard Christmas, of the other part, witnesseth that, for and in consideration of the sum of one dollar to me in hand paid, and for the further consideration hereinafter stated, the said Harry R. W. Hill hereby bargains, sells, and conveys, and by these presents doth bargain, sell, and convey, to Richard Christmas, and his heirs, his entire interest in said plantation, known as the Cocke Place, which interest is an undivided four-fifths,

and is described as follows: Sections one, two, and three, and lot one, two, three, four, five, six, and seven of section four, all in township ten, range nine west; also lots one and two of section six, township ten, range eight west; also the undivided interest of James Cocke in lot two, section fourteen; the S. E. ¼ and the W. ½ of S. W. ¼ of section ten, and W. ½ and E. ½ of S. E. ¼ of section eleven, township nine, range
120 nine west, containing about three thousand acres, lying and being in Issaquena County, State of Mississippi: To have and to hold the same to the said Richard Christmas and his heirs upon the following trust and conditions, that is to say: The said Richard Christmas, as trustee for his son Harry Hill Christmas, is to hold possession of the said land, and work it or rent it out for the benefit of his said son, and out of the rents and profits of the same he shall pay to the said Harry R. W. Hill the aforesaid sum of four thousand dollars, with interest thereon until paid; and after payment of the said sum and interest, then and in that case the said Richard Christmas is to hold said land in trust for his said son, and shall convey the same to him when he arrives at the age of twenty-one years, and shall also account to him for the rents and profits up to that time. The said Christmas, as trustee and agent, is hereby authorized, if he deems it necessary for the interest of said Harry Hill Christmas, to sell part or all of said land, and the proceeds to reinvest in land and slaves, subject to the same trusts as is contained in this deed; and he shall also invest the rents and profits in good land or slaves for the benefit of his said son, with the exce-
121 tion of a competent living for said Richard Christmas while he superintends this trust.

Witness my hand and seal.

H. R. W. HILL. [SEAL.]
MARGARET E. HILL. [SEAL.]

Witness:
R. W. PETTWAY.
F. E. MAYFIELD

STATE OF LOUISIANA, *City of New Orleans, ss:*

Personally appeared before me, the undersigned, commissioner of Mississippi in and for Louisiana, duly authorized to take the acknowledgements of deeds, &c., to be used or recorded in the said State of Mississippi, the within-named Harry R. W. Hill, who acknowledged that he signed, sealed, and delivered the within instrument on the day of the date thereof, and for the uses and purposes therein expressed, as his proper act and deed; and on the same day appeared Margaret E. Hill, the wife of the said Harry, who, on a private examination separate and apart from her husband, acknowledged to me that for the consideration expressed in the said instrument, and for divers other good and valuable considerations, she signed, sealed, and delivered the same, freely and of her own accord, without fear or compulsion of her said husband, for the purposes of relinquishing all her right, claim, or possibility of dower in said premises.

122 In testimony whereof I have hereunto set my hand and seal this 18th day of June, A. D. 1848.

[SEAL.] CHAS McRAE, *Commissioner.*

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, John McClannin, clerk of the probate court in and for said county, do hereby certify that the foregoing deed and certificate was filed for

record in my office on the 23rd day of April, A. D. 1850, and was same day duly recorded in Book B, pages 12 and 13.

Given under my hand and seal of said court, at Tallula, this 30th day of April, A. D. 1850.

[L. S.] JOHN McCLANNIN, *Clerk.*

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, Fr'k W. Anderson, clerk of the probate court in and for said county and State, hereby certify that the foregoing 5 pages contain a full, true, and correct transcript of a deed on record in Book B, pages 12 & 13, in my office, from H. R. W. Hill to R. Christmas, trustee, as fully and completely as remains of record in said book.

Witness my hand and seal of said court, at office, in Tallula, this 14th day of February, A. D. 1868.

[L. S.] FR'K W. ANDERSON, *Clerk.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

123 *Exhibit No. 6 to answer of R. Christmas.*

H. R. W. Hill and wife to R. Christmas, trustee—deed to land.

Whereas I purchased, for the use of Harry H. Christmas, from William M. Craven, and his wife, Louisiana, all the right, title, and interest (being an undivided one-fifth) which the said Louisiana McCraven had in a certain tract of land in Issaquena County, containing about three thousand acres, and known as the "Cocke Plantation:"

And whereas I agreed in writing on the 4th of Feb'y, 1847, to convey said land to Richard Christmas, as trustee of said Harry Hill Christmas, so soon as the sum of three thousand dollars with interest, (part of the purchase-money I paid to McCraven and wife,) and also a note for two thousand dollars, executed by Richard Christmas as trustee for said Harry Hill Christmas, and interest thereon, was paid me by said Richard Christmas as trustee, &c.:

And whereas said sums of money above named have been paid to me with interest:

Therefore this indenture, made and entered into this 21st day of November, A. D. 1849, between Harry R. W. Hill, and Margaret E. Hill, his wife, of the first part, and Richard Christmas, of the second part,

124 for and in consideration of the premises above stated and of the sum of one dollar to them in hand paid, the receipt of which is hereby acknowledged, have bargained, sold, and conveyed, and do by these presents bargain, sell, and convey, to the said Richard Christmas, and his heirs, an undivided fifth part of the following-described lands lying and being in Issaquena County, State of Mississippi, to wit: Sections one, two, three, and lots one, two, three, four, five, six, and seven of section four, all in township ten, range nine west; also lots one and two of section six, township ten, range eight west; also *lots two, section of section fourteen;* also the S. E. ¼ and E. ½ of S. W. ¼ of section ten, township nine, range 9 west; also the W. ½ of the S. E. ¼ of sec. 11, and the E. ½ of the S. E. ¼ of sec. 11, township 9, range 9 west; and also lot 1 in section 14, it being all the tract of land of which Hartwell Cocke died seized and possessed: To have and to hold the same to the said Richard Christmas and his heirs upon the following trust and conditions, that is to say: The said Richard Christmas *Christmas*, as

trustee for his son Harry Hill Christmas, is to hold possession of the above land in trust for his said son, Harry Hill Christmas, and shall hold the rents, issues, and profits of the same in trust for his said son; and, moreover, shall account to his said son for the same, and shall, when the said Harry Hill Christmas arrives at the age of twenty-one years,
125 convey said lands above named to him in fee. The said Christmas is hereby authorized as trustee, if he deems it necessary for the interest of the said Harry Hill Christmas, to sell part or all of said land, and the proceeds to reinvest in land and slaves, subject to the same trusts as is contained in this deed; and he shall also invest the rents and profits in good land or slaves, [mules, stock, and plantation supplies, and utensils, &c.,] for the benefit of his said son, with the exception of a competent living for said Richard Christmas whilst he superintends the property as trustee, &c.

In witness whereof the said parties of the first part have hereto set their hands and seals the date above written.

H. R. W. HILL. [SEAL.]
MARGARET E. HILL. [SEAL.]

Interlined before signing: [Mules, stock, and plantation supplies, and utensils, &c.]

STATE OF LOUISIANA, *Parish of Orleans:*

Before me, Francis N. Haralson, a commissioner of the State of Mississippi for the State of Louisiana, duly commissioned and qualified, dwelling in the city of New Orleans, personally came and appeared in New Orleans aforesaid, this thirteenth day of February, A. D. (1850) one thousand eight hundred and fifty, Henry R. W. Hill, whose name is subscribed to the within and foregoing instrument of writing, to me personally known, who acknowledged that he signed, sealed,
126 and delivered said instrument of writing on the day and year therein stated as his proper act and deed for the uses and purposes therein mentioned; and thereupon next personally came and appeared Mrs. Margaret E. Hill, also of said city, and wife of said H. R. W. Hill, whose name is also subscribed to the within and foregoing instrument of writing as grantor, who, being by me examined separate and apart from her said husband, acknowledged that she signed, sealed, and delivered said instrument of writing on the day and year therein stated, for the uses and purposes therein mentioned, as her voluntary act and deed, freely, without any fear, threats, or compulsion on the part of her said husband.

In witness whereof I have hereunto set my hand and affixed my private seal, at New Orleans, the 13th Feb'y, A. D. 1850.

[SEAL.] F. N. HARALSON,
Commissioner of Miss. for La.

THE STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, John McClaurin, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificates was filed in my office for record on the 30th day of April, A. D. 1850, and was same day recorded in Book B, pages 11 and 12.

Given under my hand and seal of said court, at Tullula, this 30th day of April, A. D. 1850.

[L. S.] JOHN McCLAURIN, *Clk.*

127 THE STATE OF MISSISSIPPI,
Issaquena County, ss:

I, Fr'k Anderson, clerk of the probate court, hereby certify that the foregoing 5 pages contain a true and complete transcript as of record in my office as aforesaid as fully and completely as remains of record in my office.

Given under my hand and seal of said court, at office, in Tallula, this 14th day of February, 1868.

[L. S.] FR'K W. ANDERSON, *Clerk.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 7 to answer of R. Christmas.

Whereas I did purchase for the benefit of Harry Hill Christmas, son of Richard Christmas, at Greenville, Washington County, Mississippi, on the 28th day of March, 1853, at a sale made under a certain deed of trust made by James and John H. Cocke to George W. Baynolds, trustee for R. M. Whiteman, by A. K. Smedes, who was substituted by a decree of the superior court of chancery of the State of Mississippi trustee to carry into effect said trust, the lands hereinafter described; also certain other lands purchased of James A. and S. P. Maxwell, and other tracts to be mentioned under levee sales:

And whereas it's my desire to convey the same, agreeable to agreement with said Richard Christmas, trustee for Harry Hill Christmas, all my interests in said lands;

128 And whereas I wish to convey for his benefit and interest said lands:

Now, therefore, this indenture, made and entered into this 15th day of May, 1853, between H. R. W. Hill, of the first part, and Richard Christmas, trustee, of the other part, witnesseth that, for and in consideration of the sum of one dollar, to said Hill paid in cash, the receipt of which is hereby fully acknowledged, and for the consideration hereafter stated, the said H. R. W. Hill hereby bargains, sells, and conveys, and by these presents doth bargain, sell, and convey, to said Richard Christmas and his heirs his entire interest *unto* the following lands and tenements, situate and lying in the county of Issaquena, State of Mississippi, to wit: All the lands conveyed by R. M. Whiteman and wife to John H. and James Cocke, being the one undivided fifth part of all the lands owned by Hartwell Cocke estate, consisting of section one, two, and three, and part of section four, township ten, range nine west; five hundred and seventy-five acres in township nine, range nine; and two hundred acres in township eleven, range nine west. Also the following lands, purchased of James A. and S. P. Maxwell: (2) lots one, two, three, and four of section twelve and all of fractional section thirteen, situated in township ten, range nine west. And the following lands of G. N. Parks, treasurer of the levee fund of Issaquena County, Mississippi: (2) west half of section eleven, township ten, range nine west, together *together* with lots five and six, in section twelve,

129 and all section ten, in township ten, range nine west, purchased at levee tax sales, also county and State tax sales: To have and to hold the same to the said Richard Christmas, his heirs, upon the following conditions, that is to say: The said Richard Christmas, as trustee for his son Harry Hill Christmas, is to hold possession of said lands, and work them or rent them out for the benefit of his said son, and account

to him for the same, and shall also convey said lands to his said son when he shall arrive at the age of twenty-one years old, together with all property from the same. The said Richard Christmas, as trustee and agent, is hereby , if he think or deem it necessary for the interest of said Harry Hill Christmas, to sell any part or portion of said lands, and to reinvest the proceeds in lands and slaves, subject to the same trusts as are contained in this deed, and shall also invest the rents and profits in slaves and lands for the benefit of his said son.

In testimony of which said Hill hereto sets his hand and seal the 15th day of May, eighteen hundred and fifty-three.

H. R. W. HILL. [SEAL.]

STATE OF LOUISIANA, *City of New Orleans:*

I, William Christy, commissioner of the State of Mississippi, duly appointed and commissioned by the governor thereof for the said
130 State of Louisiana to take the acknowledgement of deeds and other writings, do certify that the within deed from H. R. W. Hill to Richard Christmas was this day produced to me in my office, in the said city of New Orleans, by the said grantor, and by him then and there acknowledged to be his act and deed for the purposes therein mentioned, which is hereby certified to the proper registering officer in said State of Mississippi, where the premises be.

Given under my hand and seal of office this twentieth day of May, A. D. 1853.

[SEAL.] W'M CHRISTY, *Commissioner.*

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, W. B. Farr, clerk of the probate court of said county, hereby certify that the foregoing deed was filed in my office May 31st, 1853, and that the same has been duly recorded in Book "B," pages 421, 422, 423, of the record of deeds remaining in my said office.

Given under my hand and seal of office, at Tallula, this 3rd day of June, A. D. 1853.

[L. S.] W. B. FARR, *Clerk,*
By H. H. PHARR, *D. B. C.*

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, H. P. Toy, clerk of the probate court in and for said county and State, certify that the foregoing is a true and correct copy of record in this office.

Given under my hand and seal of office this 24th day of June, 1869.

[L. S.] H. P. TOY,
Clerk of Probate Court.

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

131 *Exhibit No.* 10 *to answer of R. Christmas.*

Richard Christmas to Benjamin D. Smith—D. T.

Whereas I, Richard Christmas, of the county of Warren, and State of Mississippi, did heretofore make to one Reuben A. Gentry, of the county of Williamson, and State of Tennessee, a certain deed of conveyance, by which said deed of conveyance, for and in consideration of the

sum of twenty thousand dollars, I conveyed to said Gentry all and singular a certain tract or parcel of land situated, lying, and being in said county of Williamson, and State of Tennessee, on Little Harpeth, which said land was given to my wife, Mary E. Christmas, and to myself, jointly, by the father and mother of my said wife, with exception of about one hundred acres, for which I paid to my wife's father the sum of sixteen hundred dollars; the said one hundred acres worth about double the sum I paid for it, the difference being intended as a gift in advancement *of* my wife.

And whereas my said wife, Mary E., did join with me in conveying away to said Gentry all her right, title, claim, and interest in and to said land in fee-simple, upon the express agreement that I was to convey to her, or to some person in trust for her separate use and benefit, other property in Tennessee or Mississippi, real or personal, of
132 the full value of her said interest in said lands conveyed as aforesaid to said Gentry by myself and her:

Now, therefore, know all men by these presents that I, the said Richard Christmas, for and in consideration of the premises aforesaid, and for the further consideration of five dollars cash in hand paid, the receipt whereof is hereby acknowledged, have this day bargained, sold, and conveyed, and by these presents do bargain, sell, and convey, unto Benjamin D. Smith, of said county of Warren, and State of Mississippi, and his heirs in trust, for the sole and separate use and benefit of my said wife, Mary E. Christmas, all the following-named negroes, slaves for life, to wit: Henry Pope, aged 30 years; Sandy, aged 25 years; Giles, aged 30 years; Moses, aged 33 years; Tom Smith, aged 25 years; Jock, aged 30 years; Polly, aged 25 years; Jane Criddle, aged 35 years, and her two children; Eady, aged 25 years; Yellow Tom, aged 30 years; Black Jess, aged 32 years; and Barbary, aged 30 years; and also one carriage, and two pair of gray horses, and a buggy: To have and to hold the above-named slaves, carriage, horses, and buggy, to the said Benjamin D. Smith and his heirs in trust, and upon the condition that the said Smith and his heirs shall hold the same to the only, sole, separate, and exclusive use, benefit, and behoof of my said wife, Mary E. Christmas, her heirs, executors, and administrators; and that he and
133 his heirs shall permit her to use, hold, and enjoy the same, and have the possession of the same, and upon no other condition whatever.

In testimony whereof I, the said Richard Christmas, have hereunto set my hand and seal this twenty-first day of April, 1841.

R. CHRISTMAS. [SEAL.]

I accept the foregoing deed of trust 21st April, 1841.

B. D. SMITH.

THE STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, Henry N. Jenkins, clerk of the probate court of said county, Richard Christmas, who acknowledged that he signed, sealed, and delivered the foregoing deed, on the day and year and for the purposes therein mentioned, as his act and deed.

Given under my hand and seal of office this 21st April, 1841.

[SEAL.] H. M. JENKINS, *Clk.*

THE STATE OF MISSISSIPPI, *Warren County, ss:*

I, Henry M. Jenkins, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed for

record in my office on the 21st of April, 1841, whereupon I have made the same of record in book 2, pages 256 and 257.

Given under my hand and seal of office this 8th day of July, A. D. 1841.

[SEAL.] H. M. JENKINS, *Clk.*

134 THE STATE OF MISSISSIPPI, *Warren County, ss:*

I, James H. Chappell, clerk of the probate court for said county, do hereby certify the foregoing transcript to be a true and correct copy of the original instrument of writing therein referred to as fully and completely as the same appears of record in my office in deed book 2, pages 256 and 257.

Given under my hand and seal of office this 12th day of June, A D. 1869.

[L. S.] J. H. CHAPPELL, *Clerk,*
By T. C. RICHARDSON, *D. C.*

Filed & entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 11 *to answer of R. Christmas.*

The last will and testament of D. L. Horn.

I, David L. Horn, of the county of Warren, and State of Mississippi, do make and publish this my last will and testament, hereby revoking and making void all former wills by me at any time heretofore made, as to such wordly estate as it hath pleased God to entrust me with. I dispose of the same as follows:

First. I direct all my debts to be paid, as soon as possible after my decease, out of any moneys coming into the hands of my executors from any portion of my estate, both real or personal.

135 Secondly. I hereby give and bequeath, after all my debts are paid, the sum of two thousand dollars to my half-sister Elizabeth Green, wife of William Green, of Georgia, to have and to hold the same separate and apart from her husband, and not to be subject to his debts.

Thirdly. I give and bequeath unto Thomas H. Christmas and Henry Christmas each the sum of one thousand dollars, after all of my debts are paid.

Fourthly. The residue of my whole estate, after it shall have been wound up by my executor, I hereby give and bequeath to my affectionate friends and relatives, Mary E. Christmas, and her son, William Hardeman Christmas, to be equally divided between them, share and share alike.

Fifthly. I do hereby make and appoint my relation, Thomas H. Christmas, executor of this my last will and testament, and that he shall give no security for the performance of the trust I repose in him as my executor; and further, I do hereby empower my executor to do and perform any and everything in and about the *seling* up of my estate which I might or could have done during my life in person; to sell at private sale and give a fee-simple, to *lean*, let out, and dispose of in any

136 manner which in his discretion may seem best for the benefit of my devisees, both real and personal property.

In testimony whereof I, David L. Horn, the testator, have hereunto

set my hand and affixed my seal the sixth day of August, in the year of our Lord one thousand eight hundred and forty.

D. L. HORN. [SEAL.]

Sgned, sealed, and delivered in presence of *of* us, who have subscribed in presence of one another:

W'M B. NORFLEET.
JOHN SNOW.
JA'S F. YOUNG.

STATE OF MISSISSIPPI, *Warren County*:

I, James H. Chappell, clerk of the probate court in and for said county, do hereby certify that the foregoing pages, from 1 to 2 inclusive, contain a true and complete transcript of the original last will and testament of D. L. Horn, deceased, as fully and completely as the same appears of record and on file in my office.

Given under my hand and seal of office this the 3rd day of June, A. D. 1869.

[L. S.] J. H. CHAPPELL, *Clerk.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 12 to answer of R. Christmas.

137 This indenture, made this the second day of May, in the year of our Lord one thousand eight hundred and forty, between David L. Horne, of the first part, and Richard Christmas, of the second part, both of the county of Warren, and State of Mississippi, witnesseth that the said party of the first part, for and in consideration of the sum of five dollars to him paid, and for the other considerations hereinafter mentioned, has this day bargained, sold, and conveyed, and do, by these presents, bargain, sell, and convey, unto the party of the second part the following-described tract or parcel of land, to wit: Situate, lying, and being in the county and State aforesaid, on the Yazoo River, and known as lot No. 1, section 5; lots No . 1, 2, and 4, section 4; all of section three, except the west half of the northwest quarter, and a forty-acre lot in the southern part of said section, belonging to Adams, all in township 18, range 5 east. Also the west half of section 2, and the west half of section 35, both in township 9, range 5 west, containing in all fifteen hundred acres, more or less. Also the following-described negroes, to wit: Jess, 42; Old Peter, 32; George, 35; Blunt, 12; Sam, 30; Jo, 35; Tom Claiborne, 27; Jacob, 40; Jordan, 45; George, 25; John, 45; Henry, 15; Jeff, 12; Sam, 17; Frank, 17; Dick, 17; Nick, 25; Bob, 23; Tolbert, 25; Perry, 20; Warren, 20; Wesley, 15; Munce, 25; Ep, 1; Reagan, 9; Fanny, 20;
138 Old Henry, 45; Peggy, 40, and her child; Mary Sample, 20; Fanny, 25, and her child Tener; Big Mary, 27; Nancy Sam, 25; Kitty, 24; Vista, 16; Rachel, 30; Amanda, 30; Phillis, 26, and her child; Eve, 25; Hannah, 35; Mary Mince, 35; Dilsey, and her three children; Elizabeth, 30; Jane Criddle, 34, and her child; Becky and child; Lucy, 20; Mary Bob, 20; Emily, 20, and her child; Violett, 50; Sarah, 22; and Livinia, 30 years old, and her two children: To have and to hold the aforesaid land, with all and singular the appurtenances thereunto belonging, and all of the negroes herein mentioned, to the said party of the second part, him and his heirs, forever. And the said party

of the second part, for himself, his heirs, and assigns, will forever warrant and defend the title to the aforesaid land and bargained premises, together with the said slaves, against the lawful or claims of any and all persons whatsoever claiming. But this sale made upon the express condition, that is to say: Whereas the said party of the first part is justly indebted to the said party of the second part in the following manner: twelve promissory notes, each for the sum of two thousand six hundred and sixty-seven dollars, the two first due on the first day of April, 1841;
second two due first day of April, 1842; the third two due
139 first of April, 1843; the fourth two due the first day of April,
1844; the fifth two due the first day of April, 1845; the sixth and last two due first day of April, 1846, all dated 2nd May, 1840, making in all the sum of thirty-two thousand and five dollars: Now, if the party of part shall pay off each of said notes as they respectively fall due, then this sale to be null and void; but if the party of the first part shall not pay said notes when the last of the same shall be due, then and in that case the said party of the second part shall be authorized to foreclose this mortgage for whatever amount shall then be due and unpaid.

In testimony whereof the said party of the first part has hereunto set his hand and affixed his seal the day and date above written.

D. L. HORNE. [SEAL.]

Signed, sealed, and delivered in presence of us:
W'M A. BRICKELL.
CHA'S W. ALLEN.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, Erasmus D. Downs, clerk of the circuit court of said county, David L. Horne, who acknowledged that he signed, sealed, and delivered the foregoing deed or instrument of writing as his act and deed on the day and year and for the purposes therein mentioned.

140 Given under my hand and seal of office this 10th day of June, 1840.

[L. S.] E. D. DOWNS, *Clk.*

THE STATE OF MISSISSIPPI, *Warren County, ss:*

I, Harvey M. Jenkins, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed for record in my office on the 12th of Jan'y, 1843, whereupon I have made the same of record in Book O, pages 470 and 471.

Given under my hand and seal of office this 17th day of June, 1843.

[L. S.] H. M. JENKINS, *Clk.*

STATE OF MISSISSIPPI, *Washington County:*

I, Thomas W. Endicott, clerk of the probate in and for said county, do hereby certify that the foregoing deed was filed in my office the 12th day of January, 1843, and this day duly recorded in Book L, pages 223, 224, and 225.

Given under my hand and seal of office this 31st day of June, 1843.

[L. S.] THO'S W. ENDICOTT, *Clerk*,
By W. M. WILLOUGHBY, *D. C.*

THE STATE OF MISSISSIPPI, *Washington County:*

I. Willis L. Robbards, clerk of the probate court of said county,

hereby certify that the foregoing deed and certificates are truly
141 and faithfully transcribed from the record of deeds of said county, Book L, pages 223, 224, and 225, done in pursuance of an act of the legislature establishing and organizing the county of Issaquena.

Given under my hand and seal of said court this 30th day of December, A. D. 1845.

[L. S.] W. L. ROBARDS, *Clk*,
By O. H. POLK, *D. C.*

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, John McLaurin, clerk of the probate court of said county, do hereby certify that the foregoing instrument of writing is a true and faithful copy of the original, which is of record in my office, in Book III of the transcript of deeds from Washington County, pages 427 and 428.

Given under my hand and seal of said court this 18th December, A. D. 1847.

[L. S.] JOHN McLAURIN, *Clk.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 13[1] *to answer of R. Christmas.*

Richard Christmas, trustee for Harry Hill Christmas, to William Myers—deed to land.

142 Whereas Richard Christmas, as trustee for Harry Hill Christmas, of the county of Issaquena, and State of Mississippi, did, on the first day of April, A. D, 1851, execute as such trustee to William Myers, of the same county and State, his bond for title for the following lots of ground lying in said county and State, to wit: Lots six, seven, and eight of section one; lots one, two, three, four, and five of section two, all in township ten, range nine west, containing in all six hundred and thirty-nine acres, more or less; which bond is recorded in the probate clerk's office of said county, in Book B, pages 129 and 130, of the record of deeds:

And whereas also Richard Christmas, trustee as aforesaid, did, on the 1st day of March, 1852, execute, as such trustee, to the said William Myers his certain other bond for title for a certain other tract of ground, described as lot six, in section 2, township 10, range 9 west, in said county and State, containing eighty acres, more or less, all fronting on the Mississippi River; which last bond is recorded in the probate clerk's office of said county, in Book B, pages 110 & 111, of the records of deeds, by which said several bonds the said Richard Christmas, trustee as aforesaid, obligated himself to make and execute the said William Myers, his heirs, &c., deeds of conveyance, with general war-
143 ranty, upon the removal of certain defects then existing in the title to said land, (except as to lots six and seven, known as school land, which was only to be made for the residue of a lease of 99 years, commencing from 16th January, 1837, a deed for which residue lease of said lots 6 & 7 has already been made by said Christmas, trustee as aforesaid, to said Myers, and upon the payment by said Myers to said Christmas, as trustee aforesaid, certain promissory notes therein mentioned and described, which defects in the title to said lands have been removed and the title to the same perfected, and said promissory notes paid, or secured to be paid, by said Myers to said R. Christmas, trustee as aforesaid:

Now, therefore, this indenture witnesseth that the said Richard Christmas, trustee as aforesaid, for and in consideration of the premises aforesaid, and of the sums of money in said promissory notes mentioned, to him in hand paid, or secured to be paid, by the said William Myers, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell,
144 convey, and confirm, unto the said William Myers the lots of land hereinabove described as lots 8 of section one, and lots one, two, three, four, five, and six of section *of section* , township 10, range 9 west, (a deed for other two lots having been made as aforesaid :)

To have and to hold the same, with the appurtenances, unto the said William Myers, his heirs and assigns forever. And the said Richard Christmas, trustee as aforesaid, and for himself, his heirs, executors, and administrators, does covenant, promise, and agree, to and with the said Myers, his heirs and assigns, that he, the said Richard Christmas, as trustee for the said Harry Hill Christmas as aforesaid, and for himself and his heirs, executors, and administrators, the above-described premises, with the appurtenances, unto the said William Myers, his heirs and assigns, against the said Richard Christmas, as trustee as aforesaid or otherwise, and against all persons lawfully or equitably claiming or to claim said premises, or any part thereof, shall and will warrant and by these presents forever defend; reserving to myself, however, the right of way for a wagon road as it now runs through said lots of land in the long field.

In witness whereof the said Richard Christmas, as trustee for
145 Harry Hill Christmas as aforesaid, has hereunto set my hand and seal this 28th day of January, A. D. 1854.

[SEAL.] R. CHRISTMAS,
Trustee for Harry Hill Christmas.

STATE OF MISSISSIPPI, *Issaquena County, ss:*

Personally appeared before me, Washington B. Farr, clerk of the probate court of said county, Richard Christmas, trustee for Harry Hill Christmas, who acknowledged that he signed, sealed, and delivered the within deed on the day and year therein mentioned as his act and deed.

Given under my hand and seal of said court this 30th day of January, A. D. 1854.

[L. S.] W. B. FARR, *Clerk.*

THE STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, W. B. Farr, clerk of the probate court of said county, hereby certify that the foregoing deed and certificates was filed in my office 30th day of January, A. D. 1854, and that the same has been duly recorded in Book B, pages 505 & 506, of the record of deeds in my said office.

Given under my hand and seal of said court, at office, at Tallula, this 31st day of January, A. D. 1854.

[L. S.] W. B. FARR, *Clerk.*

THE STATE OF MISSISSIPPI, *Issaquena County, ss:*

146 I Fr'k W. Anderson, clerk of the probate court, hereby certify that the foregoing five pages contain a true, correct, and complete transcript of the original deed from Richard Christmas, trustee, to William Myers, as fully and completely as the same remains of record in my office.

Given under my hand and seal of said court, at office, this 14th day of Feb'y, A. D. 1868.

[L. S.] FR'K W. ANDERSON, *Clerk.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 13² to answer of R. Christmas.

Know all men by these presents that I, Richard Christmas, trustee for Harry Hill Christmas, *are* firmly bound unto William Myers in the sum of twelve hundred dollars, well and truly to be paid, I bind myself, my heirs, executors, and administrators, firmly by these presents, signed and sealed this 1st March, 1852.

The condition of the above obligation is this: the said Myers has this day purchased of me, as trustee for Harry Hill Christmas, a tract of land known as lot 6, section 2, township 10, range 9 west, containing 80 acres, more or less, for the sum of nineteen hundred and ninety-five dollars, for which he has this day executed his three notes, all dated this
147 day, and due as follows: The first for eleven hundred and ninety-five dollars, and due 1st March, 1853; second for four hundred dollars, due 1st March, 1854; and the third, four hundred dollars, due 1 March, 1855, and payable at the counting-house of Swinny, Green & Co., New Orleans:

Now, should the said Myers properly pay and discharge all of said on or before maturity, then the said Christmas, as trustee, agrees to make him a warrantee title to said lands, the above *bound* to be void; otherwise to remain in full force and virtue. The same defects of title is expressly understood to exist as mentioned and set forth in a bond for title given said Myers, for land adjoining the tracts, on 1st April, 1851, and executed in Issaquena County, and is agreed shall govern this transaction.

In witness whereof I have hereunto set my hand and seal this 1 March, 1852.

[SEAL.] R. CHRISTMAS,
Trustee for Harry Hill Christmas.

THE STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, W. B. Far, clerk of the probate court of said county, hereby certify that the foregoing bond for title was filed for record in my office 9th May, A. D. 1853, and that the same has been duly recorded in Book B, pages 410 and 411, the records of deeds in my said office.

148 Given under my hand and seal of office, at Tallula, this 10 day of May, A. D. 1853.

[L. S.] W. B. FARR, *Clk.*

STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, H. P. Toy, clerk of the probate court of said county, do hereby certify that the foregoing transcript is a true and correct copy of the original, as fully and completely as the same appears of record in my office.

Given under my hand and seal of office this 3rd day of July, A. D. 1869.

[L. S.] H. P. TOY,
Clerk Probate Court.

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 13[3] to answer of R. Christmas.

Know all men by these presents that I, Richard Christmas, trustee for Harry Hill Christmas, *are* firmly bound unto William Myers in the full sum of three thousand one hundred and ninety-six dollars, lawful money of the United States; for the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators unto the said William Myers, his administrators, executors, firmly by these presents, sealed with my seal, and dated this first day of April, 1851.

149 The condition of the above obligation is this:

Whereas the said Richard Christmas, trustee for Harry Hill Christmas, has bargained and sold unto William Myers the following tracts or parcels of land, lying and being in the county of Issaquena, State of Mississippi, to wit: Lots six, seven, and eight of section one; lots one, two, three, four, and five of section two, all in township ten, range nine west, containing in all six hundred and thirty-nine acres, more or less, at the price of fifteen dollars per acre, the purchase-money amounting in all to nine thousand five hundred and eighty dollars, for which the said William Myers has this day executed his three promissory notes, bearing even date herewith, i. e., the first for the sum of three thousand one hundred and ninety-six dollars, payable on the first day of April, 1853; and the second for the same amount, payable first of April, 1854; and the third for the same amount, payable first of April, 1855, all of which notes are payable to R. Christmas or order, trustee for Harry Hill Christmas:

And whereas certain defects exist, or supposed to exist, in the title of said tracts or parcels of land, and the *write* to one undivided fifth interest is now in controversy by suit in the superior court of

150 chancery, at Jackson, Mississippi, between the Agricultural Bank of Natchez, Miss., and Richard Christmas, as trustee for Harry Hill Christmas, all of which defects are clouds upon the title, and all such defects the said William Myers has been fully apprised, and *has been fully apprised and* has agreed to purchase the same, and agrees to pay the purchase-money at maturity of said notes, and to secure him in the title to rely on the bond, and not plead any defects or clouds about the title against the payment of the notes, except as to the last-mentioned note, due first of April, 1855, which is not to be governed by these restrictions:

It's understood that a warrantee deed only for ninety-nine years is to be given for lots seven and eight in section one, its being school land, and to take date on the first of January, 1836:

Now, if, on or before the first day of April, 1855, the said Richard Christmas, trustee for Harry Hill Christmas, shall make, or cause to be made, a deed of conveyance, with general warranty, except as to lots 7 and 8 in section one, which is only to be made for ninety-nine years from first January, 1836, then this obligation to be void; otherwise remain in full force and virtue.

In witness whereof I have hereunto set my hand and seal the first day of April, 1851.

R. CHRISTMAS,
Trustee for Harry Hill Christmas.

151 THE STATE OF MISSISSIPPI,
Issaquena County, ss:

Personally appeared before me, John McLaurin, clerk of the pro-

bate court in and for said county, Richard Christmas, trustee for Harry Hill Christmas, who acknowledged that he signed, sealed, and delivered the within title bond on the day therein mentioned as his act and deed as trustee for said Harry Christmas as aforesaid.

Given under my hand and seal of said court, at Tallula, this 8th day of April, A. D. 1851.

[SEAL.] JOHN McLAURIN, *Cl'k.*

THE STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, John McLaurin, clerk of the probate court in and for said county, do hereby certify that the foregoing bond and certificates was filed for record in my office the 8th day of April, 1851, and was this day duly recorded in Book B, pages 129 and 130.

Given under my hand and seal of said court, at Tallula, this 7th day of May, A. D. 1851.

[SEAL.] JOHN McLAURIN, *Clerk.*

STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, H. P. Toy, clerk of the probate court of said county, do hereby
152 certify that the foregoing transcript is a true and correct copy of the original as fully and completely as the same appears of record in my office.

Given under my hand and seal of office this 3rd day of July, A. D. 1869.

[L. S.] H. P. TOY, *Cl'k.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Cl'k.*

Exhibit No. 14 *to answer of R. Christmas.*

E. North, commissioner, &c.—deed—Rachael Moore.

This indenture, made and executed by and between E. North, of the county of Issaquena, and commissioner appointed by a certain decree rendered in the superior court of chancery of the State of Mississippi, of the first part, and Rachael Moore, of said county, of the second part:

Whereas by a certain decree of said court of chancery, rendered on the 5th day of January, A. D. 1853, in a suit wherein Richard Christmas, trustee of Harry Hill Christmas, was plaintiff, and the heirs of Samuel L. Moore defendants, the said E. North was appointed commissioner, and directed and empowered to sell to the highest bidder
153 certain lands hereafter described; and in pursuance of said decree the said E. North did give notice as thereby required, and did on the 11th day of February, A. D. 1853, offer said lands to the highest bidder, at the court-house door of said county, at which said sale the said Rachael Moore was the highest and best bidder at the sum of seven thousand four hundred and seventy-six dollars for the following tracts and parcels of land, to wit: Fractional section 6, in township ten, of range eight west, and lots one, two, three, four, and five, in section one, of township ten, in range nine west, containing in all six hundred acres, more or less; and the said Rachael Moore, having paid the sum bid by her for said lands to the said Richard Christmas, as witnessed by his receipt acknowledging such payment, and in consideration of the premises the said Rachael Moore being now entitled to a deed according to said decree:

Now, this indenture witnesseth that, for and in consideration of the premises, and of one dollar to him in hand paid before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, the said E. North, commissioner as aforesaid, hath bargained,
154 sold, and conveyed, and by these presents doth bargain, sell, and convey, unto the said Rachael Moore, her heirs and assigns forever, the right, title, and estate which Samuel L. Moore, in his lifetime, had in and to said tracts and parcels of land before described, and all the right, title, interest, and estate of the defendants in the above-entitled suit in and to the same, and all right, title, estate, and interest which by virtue of said decree the said E. North, as commissioner, could lawfully sell and convey, hereby vesting in the said Rachael Moore the said lands, and all privileges and appurtenances, as fully as the said North is empowered to do: To have and to hold the said lands, with the privileges and appurtenances, unto the said Rachael Moore, her heirs and assigns forever, to her and their own use and benefit.

In testimony whereof the said parties hereto set their hands and affix their seals the 19th day of February, A. D. 1853.

[SEAL.] ELISHA NORTH,
Commissioner.

THE STATE OF MISSISSIPPI, *Issaquena County:*

Personally appeared before me, W. B. Farr, clerk of the probate court of said county, the within-named E. North, commissioner in
155 chancery, whose signature appears to the foregoing deed, and acknowledged that he signed, sealed, and delivered the same as his act and deed on the day and year therein mentioned, and for the purposes therein named.

Given under my hand and seal of office, at Tallula, this 19th day of February, A. D. 1853.

[SEAL.] W. B. FARR, *Clerk.*

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, W. B. Farr, clerk of the probate court of said county, hereby certify that the foregoing commissioner's deed was filed for record in my office 14th November, A. D. 1853, and that the same has been duly recorded in Book "B," page 480, 481, 482, of the records of deeds in my office.

Given under my hand seal of office, at Tallula, this 25 of November, A. D. 1853.

[L. S.] W. B. FARR, *Clerk.*

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, Frank W. Anderson, clerk of the probate court in and for said county and State, do hereby certify that the above and foregoing pages contain a full and perfect transcript of the foregoing deed as the remains of in my office.

In testimony whereof I hereto set my hand and seal of said
156 court, at office at Tallula, this 24th day of February, A. D. 1868.

[L. S.] F'K W. ANDERSON, *Clerk,*
By W'M S. ANDERSON, *D. C.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 15 to answer of R. Christmas.

Richard Christmas to William Towner—deed to land.

This indenture, made and entered into this twenty-seventh day of December, anno Domini eighteen hundred and forty-nine, between Richard Christmas, trustee of Harry H. Christmas, of the first part, and William Towner, of the second part, witnesseth:

That whereas the said Richard Christmas, as trustee by virtue *in* the power in him vested, sold the land hereinafter mentioned and described to the said William Towner, and executed to him a bond, 2d day of September, 1847, by which he agreed to convey to said Towner by the said bond a good title to said land:

Now, therefore, this indenture, made between the parties aforesaid, witnesseth that the said Richard Christmas, trustee as aforesaid, hath bargained, sold, and conveyed, and doth, by these presents, bargain, sell, and convey, to the said William Towner, and his heirs, for
157 and in consideration of the sum of eight thousand dollars, *to* the following described lands, lying and being in Issaquena County, State of Mississippi, to wit: The southeast quarter of section ten, the southwest quarter and west half of the southeast quarter of section eleven; also, lot No. (2) two of fractional section fourteen, all in township nine, range nine west: To have and to hold the said lands and bargained premises to the only use and behoof of the said William Towner and his heirs. And the said Christmas, as trustee as aforesaid, hereby covenants and agrees that he will, as trustee, warrant and forever defend the title to the said land against the claims of all and every *form* whatever.

In testimony whereof the said Christmas hath hereto signed his name and affixed his seal the day and year above written.

[SEAL.] R. CHRISTMAS,
Trustee for Harry Hill Christmas.

THE STATE OF MISSISSIPPI, *Issaquena County:*

Personally appeared before me, John McClaren, clerk of the probate court in and for said county, the above-named Richard Christmas, trustee of the within-named Harry Hill Christmas, who acknowledged that he signed, sealed, and delivered the within deed as his act and
158 deed, as trustee as aforesaid, on the day and year therein mentioned, *as his act and deed.*

Given under my hand and seal of said court, at Tallula, this 30th day of April, A. D. 1850.

[L. S.] JOHN McCAURIN, *Clerk.*

THE STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, John McClaurin, clerk of the probate court in and for said county, do hereby certify that the foregoing deed and certificate was filed for record in my office on the 30th day of April, A. D. 1850, and was same day duly recorded in Book "B," pages 10 and 11.

Given under my hand and seal of said court, at Tallula, this 30th day of April, A. D. 1850.

[L. S.] JOHN McCAURIN, *Clerk.*

STATE OF MISSISSIPPI, *Issaquena County:*

In testimony that the foregoing is a true and complete of the original deed, as of record in my office as aforesaid, I hereto set my hand

and seal of the probate court of said county this 14th February, A. D. 1868.

[L. S.] FR'K W. ANDERSON, *Clerk.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Cl'k.*

159 *Exhibit No. 15½ to answer of R. Christmas.*

This indenture, made and entered into this 14th day of November, 1853, between Richard Christmas, trustee for Harry Hill Christmas, and George N. Parks, both of the county of Issaquena, State of Mississippi, witnesseth that the said Richard Christmas, trustee above, for and in consideration of the sum of two thousand dollars, to him in hand paid by the said George N. Parks, the receipt of which is hereby acknowledged, have this day bargained, sold, and by these presents bargain, sell, and release, and forever quitclaim, unto the said George N. Parks all the right, title, and interest in and to the following-described lands, situated in the county of Issaquena, Mississippi, to wit: Fractional section thirteen in township ten, range nine west, containing about one hundred and fifty acres, more or less: To have and to hold the above-described lands unto the said George N. Parks, his heirs and assigns forever. The said Richard Christmas, trustee for Harry Hill Christmas, hereby agrees to warrant and forever defend the title to the said land unto the said George N. Parks, his heirs and assigns, against the claim of all and every person claiming under him as trustee, but *ist*

160 expressly understood that he, as trustee, makes no other warrantee.

In witness whereof the said Richard Christmas, trustee for Harry Hill Christmas, has hereunto set his hand and seal this 14th day of November, 1853. All taxes now assessed on said land *now* to be paid by the said George N. Parks.

[SEAL.] R. CHRISTMAS,
Trustee for Harry Hill Christmas.

STATE OF LOUISIANA, *City of New Orleans:*

Personally appeared before me, B. L. Tappan, jr., commissioner of the State of Mississippi in and for the city of New Orleans and State of Louisiana, the within-named Richard Christmas, to me personally known, who acknowledged that he signed, sealed, and delivered the foregoing deed, in his capacity as trustee aforesaid, on the day and year of the date therein mentioned.

As witness my hand and seal of office this 16th day of November, A. D. 1853.

[L. S.] B. S. TAPPAN, JR.,
Commissioner of Mississippi.

THE STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, W. B. Farr, clerk of the probate court of said county, hereby certify that the foregoing deed and certificates was filed for record in my

161 office 9th day of December, 1853, and the same has been duly recorded in Book "B," pages 483 and 484, of the record of deeds, in my said office.

Given under my hand and seal of office, at Tallula, this 9th day of December, A. D. 1853.

[L. S.] W. B. FARR, *Clerk.*

THE STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, H. P. Toy, clerk of the probate court in and for said county and State, do hereby certify that the foregoing transcript is a true and correct copy of the original deed as fully and completely as the same appears of record in my office.

Given under my hand and seal of office this 16th day of Aug., 1869.

[L. S.] H. P. TOY, *Clerk*,
By J. E. ELGIN, *D. C.*

Filed & entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 16 *to answer of R. Christmas.*

RICHARD CHRISTMAS, TRUSTEE,
To H. H. CHRISTMAS, DR.

April, A. D. 1851:

To tract sold to William Myers, as per Exhibit No. 13..... $7,500
Interest on same.

162 Feb'y 19th, 1853:

To land sold Sam. L. Moore, as per Exhibit 14..... 7,476

Sept. 2, 1847:

To land sold to William Towner, as per Exhibit No. 15..... 8,000

April, 1860:

To 10,000 cords firewood sold to steamboats, $1..... 10,000
Do. cypress timber..... 5,000

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 16½ *to answer of R. Christmas.*

JEFFERSONVILLE, IND., *May 9th*, 1866.

For valne received, I hereby assign and transfer to Harry Hill Christmas three notes of Willie Lyons, dated the 30th of November, 1859, payable to me or bearer, each for $16,666 00, with eight per cent. interest from twentieth of December, 1859, untill payd, payable at the counting-house of Payne and Harrison, New Orleans, La.; the first payable at twelve months, the second at two years, and the third at three years after the 20th of December, 1859; the first note credited by seven thousand dollars 17th December, 1860, and $5,327 19 20th March,
163 1861, and all of them subject by endorsement to the payment of $4,695 07 to A. O. and J. L. Brannin, and interest from 27th March, 1866, at 8 per cent., and of $5,000 to Martin, Cobb & Co., with like interest from 1st October, 1865.

Witness my hand and seal this 9th day of May, 1866.

R. CHRISTMAS. [SEAL.]

[Stamped.]

STATE OF INDIANA, *Clark County:*

Before me, John F. Read, a notary public in and for said county, this

9th day of May, 1866, R. Christmas acknowledged the execution of the foregoing instrument of writing to be his voluntary act and deed.

Witness my hand and seal notarial.

[L. S.] JNO. F. READ, *N. P. C. C.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 17 *to answer of R. Christmas.*

JEFFERSONVILLE, INDIANA, *May 9th*, 1866.

Rec'd of R. Christmas the sum of forty-eight thousand one hundred and seventeen dollars, by notes of Willie Lyons this day transferred to me; the notes are three in number, each for sixteen thousand six
164 hundred and sixty-six dollars and , subject credits, and leaving unpaid the above amount, which I am to credit him by when collected on his account as trustee for me.

HARRY H. CHRISTMAS.

[Stamp.]

STATE OF INDIANA, *Clark County, ss:*

Before me, John F. Read, a notary public in and for said county, this 9th day of May, 1866, Harry H. Christmas acknowledged the execution of the foregoing writing as his voluntary act and deed.

Witness my hand and seal notarial.

[L. S.] JNO. F. READ, *N. P. C. C.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 18 *to answer of R. Christmas.*

This deed, made and entered into this 10th day of May, A. D. 1866, by and between Richard Christmas, trustee, of the first part, and Harry Hill Christmas, of the second part, witnesseth:

That whereas Harry R. W. Hill and wife, by deed acknowledged by them on the 8th day of June, 1848, and recorded in the probate court of Issaquena County, in Book B, pages 12 and 13, did bargain, sell, and convey unto the said Richard Christmas, as trustee, his then entire interest in the plantation in said Issaquena County known as the
165 Cocke Place, (containing in all about three thousand acres,) being at that time an undivided four-fifths; and by a bond, dated Feb'y 4th, 1847, the said Hill obligated himself to convey to the said Christmas, trustee, the other one-fifth of said plantation; and by a deed subsequent to that time, in pursuance of said obligation, the said Hill did convey the whole of said plantation, together with other lands in said Issaquena County mentioned in said deed, (which is of record in the probate court of said county, in book ,) to the said Richard Christmas in trust, amongst other things, to convey the same to the said trustee's son, Harry Hill Christmas, the party of the second part, on his attaining twenty-one years of age:

Now, therefore, the said Harry Hill Christmas, having become twenty-one years of age, the said party of the first part, in pursuance of the power given and the trusts assumed by him in said deeds and bond, and in consideration of one dollar to him in hand paid by the said party

of the second part, does hereby bargain, sell, and convey unto the said Harry Hill Christmas all the property embraced in all the aforesaid deeds and bond, (which has not been heretofore disposed of by the said party of the first part,) being about twenty-nine hundred (2,900)
166 acres: To have and to hold the same unto the said Harry Hill Christmas, his heirs and assigns, absolutely and forever.

In testimony whereof the said party of the first part has hereunto subscribed his name and affixed his seal the day and year first herein written.

R. CHRISTMAS, *Trustee.* [SEAL.]

[Stamps.]

STATE OF KENTUCKY, *County of Jefferson:*

Be it remembered that, on the 23rd day of August, A. D. 1866, before me, the undersigned, N. R. Wilson, a commissioner resident in the city of Louisville, in the county of Jefferson, and State aforesaid, duly commissioned and qualified by the executive authority, and under the laws of the State of Mississippi, to take the acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Richard Christmas, to me personally known to be the individual named in and who executed the foregoing conveyance, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

N. R. WILSON,
Commissioner for Mississippi in Louisville, Kentucky.

167 THE STATE OF MISSISSIPPI,
Issaquena County:

I, E. D. Clark, clerk of the probate court in and for the county and State aforesaid, do hereby certify that the deed to land to which this certificate is annexed, from Richard Christmas to Harry H. Christmas, was filed in my office for record on the 6th day of October, 1866, and that the same has been duly recorded therein in Book "D" of record of deeds, pages 284 and 285.

Witness my hand and seal of office, at Tallula, this 23d day of November, A. D. 1866.

[L. S.] E. D. CLARK, *Clerk.*

[Stamp.]

Filed for record Oct. 6th, 1866.

E. D. CLARK, *Clerk.*

Recorded Nov. 23, '66, in Book "D," records of deeds, pp. 284 and 285.

E. D. CLARK, *Clerk.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 18½ *to answer of R. Christmas.*

This indenture made and entered into this fourth day of August, A. D. 1869, by and between Richard Christmas, trustee, as hereinafter

named, of the first part, and Harry Hill Christmas, of the second part:

168 Whereas H. R. W. Hill, and Margaret E., his wife, by deed in trust acknowledged by them on the 18th day of June, A. D. 1848, and recorded in Book B, pages 12 and 13, of the records of deeds in Issaquena County, Mississippi, did bargain, sell, and convey unto the said Richard Christmas, as trustee, for the use of said Harry Hill Christmas, the undivided four-fifths of a plantation situate in Issaquena County, Mississippi, commonly known as the Cocke Place:

And whereas the said Hill and wife, by a similar deed bearing date the 21st day of November, A. D. 1849, acknowledged the 13th day of February, A. D. 1850, and recorded on the 30th day of April, A. D. 1850, in Book "B," pages 11 and 12, of the records of deeds in Issaquena County, Mississippi, did bargain, sell, and convey unto the said Richard Christmas, as trustee, for the use of the said Harry Hill Christmas, the remaining undivided one-fifth of the said plantation situate in the said Issaquena County, known as the Cocke Place, and more particularly described as follows, to wit: Sections one, (1,) two, (2,) and three, (3,) and lots one, (1,) two, (2,) three, (3,) four (4,) five, (5,) six, (6,) and seven, (7,) of section four, (4,) all in township ten, (10,) range nine (9) west; also lots one (1) and two (2) of section six, (6,) township ten, (10,) range eight (8) west; also the undivided interest of James

169 Cocke in lot No. two, (2,) section fourteen, (14,) the southeast quarter ($\frac{1}{4}$) and the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section ten, (10,) and the west half ($\frac{1}{2}$) and east half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section eleven, (11,) township nine, (9,) range nine (9) west, containing about three thousand acres, and being all the land of which Hartwell Cocke died seized and possessed:

And whereas, by a similar deed in trust for the same purpose made and executed by the said H. R. W. Hill, on the 15th day of May, A. D. 1853, acknowledged on the 20th day of May, A. D. 1853, and recorded in Book "B," pages 421, 422, and 423, of the records of deeds in said Issaquena County, the said Hill did bargain, sell, and convey unto the said Richard Christmas, as trustee, for the use of the said Harry Hill Christmas, the following lands and tenements, situate in said Issaquena County, Mississippi, to wit: All the lands conveyed by R. M. Whitman and wife to John H. and James Cocke, being the one undivided fifth part of all the lands owned by Hartwell Cocke's estate, consisting of fractional section six, (6,) township ten, (10,) range eight (8) west, sections one, (1,) two, (2,) and three, (3,) and part of section four, (4,) township ten, (10,) range nine (9) west, five hundred and seventy-five (575)

170 acres in township nine, (9,) range nine (9) west, and two hundred (200) acres in township eleven, (11,) range nine (9) west, being a part of the same lands hereinbefore described as the Cocke Plantation. Also the following lands purchased of James A. and L. P. Maxwell: lots one, (1,) two, (2,) three, (3,) and four (4) of section twelve, (12,) and all of fractional section thirteen, (13,) township ten, (10,) range nine (9) west. And the following lands purchased of G. N. Parks, treasurer of the levee fund of Issaquena County, Mississippi: the west half ($\frac{1}{2}$) of section eleven, (11,) township ten, (10,) range nine (9) west, together with lots five (5) and six (6) in section twelve, (12,) and all of section ten, (10,) in township ten, (10,) range nine (9) west, purchased at levee, county, and State tax sales:

And whereas, by the terms of the said several deeds in trust, the said Richard Christmas, the party of the first part, as trustee and agent, was then and thereby required to hold the said lands for the use and bene-

fit of his said son, Harry Hill Christmas, then an infant, and work and rent said lands, and account to the said Harry for the rents, issues, and profits of the same when the said Harry should arrive at his majority:

And whereas, by the terms of the said several deeds in trust,
171 the said Richard Chrismas was authorized and empowered to sell and convey any portion of the said lands and to reinvest the proceeds in lands and slaves subject to the said trusts as contained in the said deeds:

And whereas, by virtue of the said power of sale in the said deeds contained, the said Richard did sell and convey to the following-named persons the following-described tracts of land, to wit: To William Myers, on the first day of March, A. D. 1852, a tract of said lands known as lot six, (6,) section two, (2,) township ten, (10,) range nine (9) west, eighty (80) acres, more or less, for the sum of nineteen hundred and ninety-five dollars; also lots six, (6,) seven, (7,) and eight (8) of section one, (1;) lots one, (1,) two, (2,) three, (3,) four, (4,) and five (5) of section two, (2), all in township ten, (10,) range nine (9) west, containing in all seven hundred and twenty (720) acres, more or less, for the sum of nine thousand five hundred and eighty dollars, which said several sums of money were paid by said Myers to the said Richard as trustee as aforesaid, and said tracts of land were duly conveyed by said Richard to said Myers by deed bearing date the 28th day of January, A. D.
1854, and recorded in Book B, pages 505 and 506, of the records
172 of deeds in Issaquena, Mississippi; to William Towner, on the 26th day of December, A. D. 1849, for the sum of eight thousand dollars, the following-described lands, part and parcel of the said trust estate, to wit: the southeast quarter ($\frac{1}{4}$) of section ten, (10,) the southwest quarter ($\frac{1}{4}$) and west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section eleven, (11;) also lot No. two (2) of fractional section fourteen, (14,) all in township nine, (9,) range nine (9) west, a deed to which is recorded in Book "B," pages 10 and 11, of the records of deeds in the said Issaquena County; to George N. Parks, for about two thousand dollars, fractional section thirteen, (13,) township ten, (10,) range nine (9) west, for which a deed has been made to said Parks by said Richard Christmas, trustee, &c., and recorded in the proper office in the said Issaquena County:

And whereas there was also sold of the said lands by E. North, commissioner in chancery, to Rachael Moore, for the sum of seven thousand four hundred and twenty-six dollars, the following parcels, to wit: Fractional section six, (6,) in township ten, (10,) of range eight (8) west; and lots one, (1,) two, (2,) three, (3,) four, (4,) and five (5) of section one, (1,) of township ten, (10,) in range nine (9) west, containing in all six
hundred (600) acres, more or less, the deed to which bears date
173 the 19th day of February, A. D. 1853, and is recorded in Book "B," pages 480, 481, and 482, of the records of deeds in the said Issaquena County:

And whereas there now remains unsold of the said trust estate the following lands, to wit: Lots one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) and seven (7) of section four, (4;) all of section three, (3,) lots seven (7) and eight (8) of section two, (2,) and two hundred (200) acres in township eleven, (11,) range nine (9) west, of the aforesaid Cocke estate; also lots one, (1,) two, (2,) three, (3,) and four (4) of section twelve, (12,) township ten, (10,) range nine (9) west, of the aforesaid lands purchased by H. R. W. Hill of James A. and L. P. Maxwell; also the west half ($\frac{1}{2}$) of section eleven, (11,) together with lots five (5)

and six (6) of section twelve, (12,) and all of fractional section ten, (10,) in township ten, (10,) range nine (9) west, purchased of George N. Parks, treasurer of the levee fund of Issaquena County, Mississippi, bought at levee, county, and State tax sales, in all 2,780 acres, more or less:

And whereas heretofore, to wit, on the 10th day of May, A. D. 1866, the undersigned trustee made a deed to the said Harry Hill Christmas, who had theretofore arrived at the age of twenty-one years, intending thereby to convey to the said Harry all the aforesaid lands of
174 the said trust estate remaining unsold, but by mistake some of said lands were omitted from said deed and others of them were therein imperfectly described; and *and* the said Richard Christmas, trustee as aforesaid, is willing and wishes to convey all the said unsold lands to the said Harry Hill Christmas by the description thereof hereinbefore given:

Now, this indenture witnesseth that the said Richard Christmas, trustee as aforesaid, by virtue of the powers in him vested by the aforesaid deeds in trust, and in consideration of ten dollars to him cash in hand paid by the said Harry Hill Christmas, the receipt of which is hereby acknowledged, has bargained, sold, and conveyed, and does by these presents bargain, sell, and convey, unto the said Harry Hill Christmas, his heirs and assigns, all the lands of the said trust estate remaining unsold as hereinbefore particularly described, being the residue of the lands conveyed by H. R. W. Hill and wife, and by said H. R. W. Hill to the said Richard Christmas in trust, as is hereinbefore set out, after deducting therefrom the aforesaid lands sold and conveyed by the said Richard, trustee, to the said William Myers, William Towner, and George N. Parks, and by the said E. North, commissioner, to Rachael Moore: To have and to hold the said lands hereby conveyed unto
175 the said Harry Hill Christmas, his heirs and assigns, in fee-simple, forever.

In testimony whereof the said party of the first part, trustee as aforesaid, has hereunto subscribed his name and affixed his seal the day and year first above written. The figures 3000 erased, and the figures 2780 interlined, before signing.

[SEAL.] R. CHRISTMAS, *Trustee.*

Witness: N. R. WILSON.

STATE OF KENTUCKY, *County of Jefferson:*

Be it remembered that, on this 5th day of August, A. D. 1869, before me, the undersigned, N. R. Wilson, a commissioner, resident in the city of Louisville, in the county and State aforesaid, duly commissioned and qualified by the executive authority, and under the laws of the State of Mississippi, to take the acknowledgment of deeds, &c., to be used or recorded therein, personally appeared R. Christmas, trustee of Harry Hill Christmas, to me personally known to be the person named in, and who executed, the foregoing conveyance, who acknowledged that he signed, sealed, and delivered the same, on the day and year therein named, as his voluntary act and deed, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 5th day of August, 1869.

[L. S.] N. R. WILSON,
Commissioner for Mississippi, in Louisville, Kentucky.

176 STATE OF MISSISSIPPI, *Issaquena County, ss:*

I, H. P. Toy, clerk of the probate court in and for said county and State, do hereby certify that the foregoing deed was filed for record in my on the 14th day of August, 1869, which I have caused to be duly recorded in Deed Book "D," pages 688, 689, 690, and 691.

Given under my hand and seal of office this 16th day of August, A. D. 1869.

[L. S.]

H. P. TOY, *Clerk*,
By J. E. ELGIN, *D. C.*

Filed for record Aug. 14, 1869.

H. P. TOY, *Clk.*

Recorded in Deed Book "D," pages 688, 689, 690, and 691, Aug. 16, 1869.

H. P. TOY, *Clk*,
By J. E. ELGIN, *D. C.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 19 *to answer of R. Christmas.*

JEFFERSONVILLE, INDIANA, *May 10th*, 1866.

Received of Richard Christmas two joint drafts of Horace B. Tibbetts, and his wife, Francis E. Tibbetts, each for the sum of twenty-five thousand four hundred and fifty-two dollars, amounting in all to
177 fifty thousand nine hundred and four dollars, dated Carroll Parish, Louisiana, December 15th, 1859, and due twenty-four months after 15th December, 1859, and drawn on the house of R. W. Estlin & Co., of New Orleans, and by said R. W. Estlin and Co. accepted. These two drafts are assigned to me in full consideration of thirty-six thousand dollars cash, balance due me *me* this day on final settlement with my father, R. Christmas, as trustee for me, and I hereby agree to receive the above drafts in full consideration of all indebtedness of whatever kind he may have incurred as trustee for me for rents, uses, land, and slaves, sold as my trustee and agent. I further agree to take the above drafts at my own risk as to payment, and release him from all liabilities as endorser on the same.

HARRY H. CHRISTMAS.

[Stamp.]

STATE OF INDIANA, *Clark County:*

Before me, John F. Read, a notary public in and for said county, this 11th day of May, 1866, Harry H. Christmas acknowledged the execution of the foregoing instrument of writing to be his voluntary act and deed.

Witness my hand and seal notarial.

[L. S.] JNO. F. READ, *N. P. C. C.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

178 *Exhibit No. 20 to answer of R. Christmas.*

DISTRICT COURT OF THE UNITED STATES,
District of Kentucky, (at Louisville,) sct:

Whereas Richard Christmas has been duly adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf:

It is therefore ordered by the court that said Richard Christmas be forever discharged from all debts and claims which by said act are made provable against his estate, and which existed on the 14th day of May, eighteen hundred and sixty-eight, on which day the petition for adjudication was filed by him; excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of the court, at city of Louisville, in the said district, this 29th day of October, A. D. eighteen hundred and sixty-eight.

[L. S.] BLAND BALLARD, *Judge.*

Filed and entered Aug. 24, 1869.

G. T. SWANN, *Clk.*

179 *Exhibit No. 21 to answer of R. Christmas.*

Richard Christmas—197 acres of land conveyed by Alexander and Sarah Smith, registered July 18th, 1836.

This indenture, made and entered into this eighteenth day of July, in the year of our Lord one thousand eight hundred and thirty-six, between Alexander and Sarah Smith of the one part, and Richard and Mary E. Christmas of the other part, all of the county of Williamson, State of Tennessee, witnesseth that the said Alexander and Sarah, for and in consideration of natural love and affection, as well as for the further consideration of one dollar cash in hand paid, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, and conveyed to the said Richard and Mary, and by these presents do give, grant, bargain, sell, and convey to the said Richard and Mary, a certain tract or parcel of land situate, lying, and being in said county of Williamson, on Little Harpeth, and bounded as follows, viz: Beginning at a rock, William G. Childress' northeast corner, running north one hundred and fifty-eight poles to a walnut in the south boundary line of a tract surveyed and intended by said Alexexander and Sarah for their sons James L. Smith; thence west with the said line two hundred poles
180 to a stake in the west boundary line of James Leaper's pre-emption; thence south with said boundary one hundred and fifty-eight poles to a dogwood, the southwest corner of said pre-emption; thence east with the south boundary of said pre-emption two hundred poles to the beginning, containing one hundred and ninety-seven acres, be the same more or less: To have and to hold the said tract of land, with the hereditaments and appurtenances thereunto belonging, to the said Richard and Mary, their heirs and assigns forever. And the said Alexander and Sarah, for themselves, their heirs, executors, administrators, do hereby warrant and defend the title of the said tract of land to the said Richard and Mary, their heirs, executors, administrators, and assigns, against the claim of all and every person.

In testimony whereof the said Alexander and Sarah have hereunto set their hands and seals the day and date first above written.

ALEXANDER SMITH. [SEAL.]
SARAH SMITH. [SEAL.]

STATE OF TENNESSEE, *Williamson County:*

Personally appeared before me, Lemuel B. McConnico, clerk of the county court of Williamson County, Alexander Smith, one of the within-named bargainors, with whom I am personally acquainted, and who acknowledged that he executed the within deed for the purposes
181 therein contained. And Sarah Smith, (the feme covert,) having also appeared before me privately and apart from her husband, the said Alexander Smith, acknowledged the execution of said deed to have been done by her freely, voluntarily, and understandingly, without compulsion or restraint from her said husband, and for the purposes therein expressed.

Witness my hand, at office, this 18th day of July, A. D. 1836.

L. B. McCONNICO.

STATE OF TENNESSEE, *Williamson County:*

The foregoing is a perfect transcript as the same appears and remains of record in my office. Registered 18th July, 1836, on pages 388 and 389 of Record Book N.

Witness my hand, at office, this 14th day of June, 1869.

W. D. BRADLEY,
Register for Williamson County.

STATE OF TENNESSEE, *Williamson County:*

I, William Cummins, cl'k of the county court of said county, do certify that William D. Bradly, whose genuine signature appears to the above certificate, is register of said county; that he was duly elected and qualified; and that full faith and credit are due his official acts.

Given under my hand and seal of office June 14th, 1869.

[L. S.] W'M CUMMINS, *Cl'k.*

182 STATE OF TENNESSEE, *Williamson County:*

I, Robert S. Ballew, judge of the county court of said county, do certify that William Cummins, whose genuine signature appears to the within certificate, is clerk of our said court; that he was duly elected and qualified; and that full faith and credit are due his official acts.

Given under my hand and seal the 14th June, 1869.

[SEAL.] R. S. BALLEW, *Judge.*

STATE OF TENNESSEE, *Williamson County:*

I, William Cummins, clerk of the county court of said county, do certify that Robert S. Ballou, whose genuine signature appears to the above certificate, is judge of said court; that he was duly appointed, commissioned, and sworn; and that full faith and credit are due his official acts.

Given under my hand and seal of office June 14th, 1869.

[L. S.] W'M CUMMINS, *Cl'k.*

Filed & entered Aug. 24th, 1869.

G. T. SWANN, *Cl'k.*

Exhibit No. 22 to answer of R. Christmas.

Reuben A. Gentry deed for 3 tracts of land on Little Harpeth,
183 executed by Richard and Mary E. Christmas; registered 11th September, 1839.

This indenture, made and entered into this day of September, in the year of our Lord one thousand eight hundred and thirty-nine, between Richard Christmas, and Mary E. Christmas, his wife, of the county of Williamson, and State of Tennessee, of the one part, and Reuben A. Gentry, of the county and State aforesaid, of the other part, witnesseth that the said Richard Christmas and MaryE. Christmas, for and in consideration of the sum of twenty thousand dollars, to them in hand paid by the said Reuben A. Gentry at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain and sell, alien, convey, and confirm, unto the said Reuben A. Gentry, his heirs and assigns, the three several tracts of land hereinafter described, with all the appurtenances thereunto belonging, to wit: One certain tract or parcel of land, lying, being, and situate upon the waters of the Little Harpeth, in the county of Williamson, and State of Tennessee, formerly conveyed by Alexander Smith to Richard Christmas, containing by estimation one hundred and eleven and a quarter acres, and bounded as follows: Beginning at the southeast corner of a tract
184 purchased by Alexander Smith from Robert and Andrew Carothers, running west one hundred and eight and a half poles to a stake, Thomas Parkes' corner; thence north sixty-six poles to a hickory, Thomas Parkes' corner; thence west sixteen and a half poles to a black ashe; thence north eighty-four poles to a hickory, dogwood, and sugar tree; thence east one hundred and twenty-one poles to a stake, the northeast corner of the tract; thence south one hundred and fifty-five poles to the beginning. Also one other tract of land, also lying and being upon the waters of Little Harpeth, in the county of Williamson, and State of Tennessee, formerly conveyed by Alexander and Sarah Smith to the said Richard Christmas, and Mary E., his wife, containing by estimation one hundred and ninety-seven acres, and bounded as follows, to wit: Beginning at a rock, William G. Childress' northeast corner; running thence north one hundred and fifty-eight poles to a walnut in the south boundary line of a tract surveyed and intended by the said Alexander and Sarah Smith for their son James L. Smith; thence west with said line two hundred poles to a stake in the west boundary line of James Leaper's pre-emption; thence south with said west boundary line one hundred and fifty-eight poles to a dogwood, the southwest corner of said pre-emption; thence east with south
185 boundary line of said pre-emption to the beginning. And also one other tract or parcel of land, conveyed by Thomas Parkes to Richard Christmas, lying on the waters of Little Harpeth, in the county of Williamson, in the State of Tennessee, containing by estimation six and three quarters of an acre, and bounded as follows: Beginning at a hickory, the northwest corner of the tract purchased by Richard Christmas from Alexander Smith; thence north forty-two poles to a stake in the centre of the Franklin turnpike; thence with the centre of said turnpike to a stake in David Johnson's south boundary line; thence east to the beginning. To have and to hold the said several above-described tracts or parcels of land above bargained and sold unto him, the said Reuben A.

Gentry, his heirs and assigns forever, to his and their proper use and benefit and behoof. And the said Richard Christmas, and Mary E. Christmas, his wife, for themselves, their heirs, executors, and administrators, do covenant, promise, and agree, to and with the said Reuben A. Gentry, his heirs, and assigns, that the title to the above-described several tracts and parcels of land above conveyed, or so intended to be, will warrant and forever defend against the title, claim, and demands of all and all manner of persons *whosoever* in *the* law or equity, whereby the
186 same may be affected or encumbered.

In testimony whereof the said Richard Christmas and Mary E. Christmas have hereunto set their hands and seals the day and year first above written.

R. CHRISTMAS. [SEAL.]
M. E. CHRISTMAS. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF TENNESSEE, *Williamson County:*

Personally appeared before me, Lemuel B. McConnico, clerk of the county court of Williamson County, Richard Christmas and Mary E. Christmas, the within-named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within deed for the purposes therein contained; and the said Mary E. Christmas, the feme covert, having also personally appeared before me, privately and apart from her husband, the said Richard Christmas, acknowledged the execution of said deed to have been done by her freely, voluntarily, and understandingly, without compulsion or restraint from her said husband, and for the purposes therein expressed.

Witness my hand, at office, this 7th day of September, 1839.

L. B. McCONNICO.

STATE OF TENNESSEE, *Williamson County:*

The foregoing is a true and perfect transcript of a deed, as the
187 same appears and remains of record in my office, registered 11th September, 1839, on pages 123 and 124 of Record Book P.

Witness my hand, at office, this 14th day of June, 1869.

W. D. BRADLY,
Register for Williamson County.

STATE OF TENNESSEE, *Williamson County:*

I, William Cummins, clerk of the county court of Williamson County, do certify that William D. Bradley, whose genuine signature appears to the above certificate, is register for said county; that he was duly elected and qualified; and that full faith and credit are due his official acts.

In testimony whereof I have hereunto set my hand and affixed my seal of office the 14th day of June, 1869.

[L. S.] W'M CUMMINS, *Clerk.*

STATE OF TENNESSEE, *Williamson County:*

I, Robert S. Ballou, judge of the county court of said county, do certify that William Cummins, whose genuine signature appears to the above certificate, is clerk of said court; that he was duly elected and qualified; and that full faith and credit are due his official acts.

Given under my hand and seal this the 14th June, 1869.

[SEAL.] R. S. BALLOU, *Judge.*

188 STATE OF TENNESSEE, *Williamson County:*

I, William Cummins, clerk of the county court of said county, do certify that Robert S. Ballou, whose genuine signature appears to the within certificate, is judge of said court; that he was duly appointed, commissioned, and qualified; and that full faith and credit are due his official acts.

Given under my hand and seal of office the 14th June, 1869.

[L. S.] W'M CUMMINS, *Clk.*

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 23 to answer of R. Christmas.

I, H. H. Christmas, of the county of Jefferson, and State of Kentucky, do hereby nominate and appoint Richard Christmas my attorney in fact to sell and convey any and all real estate that I am possessed of in the States of Mississippi, Kentucky, or any other State in the United States; and to give a general warranty deed to the same; and to take and receive the consideration money, or to take notes for the same, or to make exchanges of said property for other real or personal property. And I also authorize my said attorney to sell and convey any and all personal property of every kind and description that I am pos-
189 sessed of, and to make conveyances of the same for me and in my name. And I also authorise and empower my said attorney to demand and collect of and from all persons indebted to me by notes, accounts, or otherwise, in the States of Mississippi, Kentucky, or any other State in the United States, and to give all necessary receipts therefor. And in case of failure to pay on the part of any person or persons indebted to me, my said attorney is authorized and empowered to bring suit or suits against any person or persons that may be indebted to me, in my name, and to employ counsel or agents at my expense. And my said attorney is authorized and empowered to bring and prosecute in my name any suit or suits that may be necessary to recover the possession of any real or personal property that now belongs to me, or that I may be entitled or have a right to; and to employ any counsel or agents that may be necessary in the premises. And my said attorney is fully authorised and empowered, as my attorney in fact, to do and transact all and everything that is or may be necessary for me in the management of any and all of my business of every kind and description. And I hereby ratify and confirm all the acts of my
190 said attorney as fully as if I were present and doing the same myself.

This eighteenth day of February, 1868.

HARRY H. CHRISTMAS. [SEAL.]

[Two internal revenue stamps of 25 cents each affixed & cancelled.]

STATE OF MISSISSIPPI, *Issaqeuna County:*

Before me, Frank W. Anderson, clerk of the probate court in and for said county, personally came and appeared H. H. Christmas, personally known to me, who acknowledged that he signed, sealed, and delivered the foregoing power of attorney, as his act and deed, on the day and year therein mentioned, for the uses and purposes therein mentioned.

{Seal of the probate court of Issaquena County, Miss.} Given under my hand and seal of said court, at office, in Tallula, this 18th day of February, A. D. 1868.

FR'K W. ANDERSON, *Clerk.*

(Endorsed:) Filed for record this 31st day of Dec., 1868.
H. W. GRAVES.

Exhibit No. 23 to answer of Rich'd Christmas. Filed and ent'd Aug. 24th, 1869.

G. T. SWANN, *Clk.*

And on the 24th day of August, A. D. 1869, came the defendant, Harry Hill Christmas, by his solicitor, John D. Freeman, and filed
191 his answer to the bill of complaint in this cause; which said answer is in the words and figures following, to wit:

In the circuit court of the United States for the southern district of Mississippi.

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS.

The separate answer of Harry H. Christmas to the bill of complaint herein.

This respondent, for answer to so much of said bill as he is advised it is necessary for him to answer unto, answering, says:

He knows nothing of the pretended judgment alleged to have been obtained against the said Richard Christmas by complainants on the 23d day of May, 1860, but he is informed by his counsel that no such judgment was in fact rendered; that no record of the same was on file in said circuit court of the United States; and therefore denies the same and calls for full proof.

Respondent knows nothing of the alleged writ of error said to have been sued out by the said Richard Christmas, nor of the supposed writ of error bond, nor of the sureties therein; and therefore denies the same and calls for full proof, if to be affected thereby.

192 Respondent knows nothing of the alleged proceedings in the Supreme Court of the United States, whereby said supposed judgment is alleged to have been affirmed; but if it shall appear that such an affirmance has been had, this respondent has been informed by his counsel that there was no final judgment in said case in the circuit court of the United States against the said Richard Christmas; and respondent is also informed, and so charges and pleads, that a writ of error from said circuit court to said Supreme Court only lies from a final judgment of the said circuit court, and so respondent says that said Supreme Court had no jurisdiction whatever of said supposed writ of error, and that the proceedings of an affirmance of said supposed judgment were "coram non judici," and utterly null and void, and not binding on this respondent, who was nota party thereto.

Respondent knows nothing of the supposed final record of said case in said circuit court alleged to have been lost, but is informed, and believes, and charges that no such final record was made in said circuit court of said pretended judgment, and therefore that no such record was ever lost.

And as to the charges in said bill, that by the alleged affirmance of said supposed judgment the liability of the sureties on said writ
193 of error bond became fixed, and the said alleged judgment final and conclusive, respondent is informed and believes that the same is untrue in law and in fact, and so denies the same.

Admits that said Richard Christmas journied in France and England in 1865 and 1866; knows nothing of the alleged correspondence between the said Richard Christmas and said William Yerger, and, if to be affected thereby, calls for the production of said letters and full proof of the same; knows nothing of the alleged assignment or pledge by the said Richard Christmas to said William Yerger of a note of said Lyons, made payable to said Christmas or bearer, for the sum of $16,666 66, dated about the 30th of Nov., 1859, and secured by a special mortgage on land, part of the purchase-money of which it was given to secure, and bearing 8% interest; but respondent states that there were three notes, all of that identical description, given by the said Lyons to said Richard Christmas or bearer at the same time, for the same purpose, for the same amounts, and secured by the same mortgage lien on the same land; and said repondent is not informed by the bill of complainants which one of said three notes the said complainants
194 claim to have been assigned to them, and so respondent denies said assignment.

Respondent further states that, in the year A. D. 1862, the said defendant, Richard Christmas, was lawfully indebted to this respondent, as trustee of this respondent, for a large trust estate situated in Issaquena County, Missi., consisting of a large and valuable cotton plantation, and the income of the same from the day of A. D. 1847, to the day of August, 1862; also of a large body of wild lands and the proceeds of the sales of the same; also of a large number of slaves and their hires for several years; as also of the value of part of said slaves, the same having been finally sold by said Richard. For a more particular account of said trust estate respondent refers to the answer of said Richard Christmas filed in this case, and which is adopted by this respondent as his answer in this respect.

Respondent further states that, in the month of August, 1862, said Richard Christmas assigned said three notes to this respondent by written assignment, and delivered said assignment and said notes to this respondent in part payment of the large indebtedness of said Richard to this respondent, as shown by his said answer.

Respondent further states that he held all of said three notes
195 until the month of , 1864, when respondent sent them in a box, directed to said Richard, to Matamoras, to the care of Jose San Roman, to be delivered to said Richard, and to be held by him for safe-keeping for the use of this respondent.

Respondent is informed and believes that said Richard, on his departure for Europe, left said notes with A. O. Brannins, in New York; that said Brannin, in April or May, 1866, carried the same to Louisville, Ky., where the same were attached by proceedings in chancery in the chancery court of Louisville, Ky., in favor of Martin, Cobb & Co., on a claim against said Richard Christmas for the sum of $10,386 56. A copy of said attachment proceedings is filed with the answer of said Richard, and referred to as a part hereof.

Respondent has read a copy of the answer of said Richard in reference to the said proceedings in the attachment, and the settlement of the same, the assignment of a part of said notes to Martin, Cobb & Co., and said Brannins, and of the assignment of the residue of the same to this respondent, and hereby adopts the same as part of his answer; and respondent adopts the entire answer of said Richard as his own,
196 except as the same may be hereinafter modified.

Respondent denies that the several transfers of said Lyons' notes to this respondent by said Richard was on a pretended considera-

tion, but insists that the same were bona fide, and for a valuable consideration far beyond the values of said notes; denies that the trust estate conveyed to the said Richard for the use of this respondent by H. R. W. Hill was a colorable arrangement to defraud or defeat creditors of said Richard or any one else; denies that the debt of said Richard to this respondent was not claimed by respondent, but charges that the same was claimed as stated in said answer of said Richard; denies that said Richard devised the said assignment to respondent to cover the debt due from Lyon, and place the same beyond the reach of creditors; insists that respondent was a preferred creditor in law of said Richard; denies that said Richard Christmas procured a settlement with said Lyons in the name of respondent, by which, in the year 1866, said Lyon gave his two notes for the sum of $8,339 90 each to this respondent, but this respondent made the settlement himself, and contrary in its terms to the advice of his father, the said Richard; denies that said
197 notes herein for $8,339 90 were in renewal of either of the original notes for $16,666 60 each, but given to secure respondent an arbitrary balance in compromise and settlement of all of said original notes of said Lyons to said Richard or bearer.

Respondent does not know that said W'm Yerger regarded said original notes, or either of them, as assigned or pledged to him by the said Richard, and so denies the same; denies that said Yerger had any legal claim on said notes; denies that the same or either of them were equitably assigned to said Yerger by said Richard, so far as respondent knows or learns or is informed; but if the same were so assigned in 1865 or 1866, the said alleged assignment was made at a time when the title to said notes was in this respondent, and not in said Richard; and so respondent charges that said Yerger took no right or title to said note or notes, at law or in equity, by reason of said alleged assignment; denies that said Richard deposited the first of said notes for $8,339 90 with Payne, Huntingdon & Co. for any consideration whatever; admits that respondent pledged said note himself to said Payne, Huntingdon & Co., for an advance of about $3,500 or thereabouts to this respondent, and his partner in planting, one Kingsbury; denies that said
198 Richard, through John D. Freeman, caused suits to be instituted on said notes in the circuit court of the United States for the district aforesaid, as untruly stated in said bill, but says this respondent employed said Freeman in person, as counsel for himself, to bring all of said suits in said bill named.

Respondent is informed that his debt due to Payne, Huntingdon & Co. has been paid by Mary E. Christmas, and, if so, the title of said Mary E. Christmas is completo to said note claimed by her, as this respondent made to said Mary E. a written transfer of said note in consideration of her agreement to pay said debt; denies that the transfer of said note to said Mary E. was without actual consideration, but insists that the consideration for the same was legal and valuable, and the same as set forth in the answer of said Richard, and in this answer, and as shown by the proof in chancery case No. 46, referred to in complainants' bill; denies that said transfer was in fraud of the rights of complainants, or the sureties of said Christmas, the said Yerger and Anderson; denies that said transfer was procured by the said Richard for the purpose of defrauding his creditors or evading the payment of the same; denies that said Richard procured the transfer of the two Lyons
199 notes for $8,339 90 each to this respondent for any purpose whatever; this respondent procured those notes of Lyons himself, without any agency of said Richard; denies that this respondent knew

of the alleged indebtedness of said Richard to said complainants, or of any purpose of the said Richard to defraud them in any respect; denies that the settlement between respondent and said Richard, and between Lyons and respondent, was a scheme to keep said fund for the benefit of Richard Christmas and his family.

Respondent has been informed that after the said settlement between this respondent and said Richard, in May, 1866, the said Richard met with a heavy loss upon a lot of cotton held by him in Liverpool, the particulars of which are set forth in the answer of said Richard, and that by reason of this loss, and other losses arising out of the destruction of his property and credits during the late war, he became insolvent in the year 1868, and thereupon filed his petition to be declared a bankrupt, as stated in complainants' bill.

Respondent further states that the written assignment of said Lyon's notes, made to this respondent in August, 1862, during the war, became lost or mislaid, so that respondent cannot now produce the same.

200 But respondent is informed, and so charges, that said written assignment was not material to the title of this respondent. Said notes were made payable to bearer; and the same having been delivered by said Richard to this respondent in part payment of the indebtedness of said Richard to this respondent, a sufficient title to said notes passed thereby to this respondent. Said notes were commercial paper, in market overt, and purchased by this respondent, without any notice of the pretended claim of complainants thereto, and so respondent claims that he had a good title to said notes, alike by the transfer of 1862 and that of May 1866, as heretofore stated. Until the filing of complainants' bill, respondent never heard of the claim therein set forth to either of said notes, nor does it appear by said bill that any such claim was ever before asserted or made in any form or to anybody.

And this respondent, further answering, states that he is informed, and so charges the fact to be, that the original note on which John W. Russell et al., complainants in this bill, obtained said judgments against said Richard was a forgery as to the said Richard; that he never signed, made, executed, or delivered the same, nor did he ever receive any consideration for the same.

201 Respondent is informed, and so charges, that said pretended judgment of said complainants was obtained by fraud and the perjury of a witness for said complainants. And this respondent is advised that, as he was not a party to said judgment, he is not bound thereby, and claims the right to show that said judgment was fraudulent and void; and as to all other allegations of said bill not herein fully answered, respondent adopts the answer, discovery, proofs, and exhibits contained in the answer of his co-defendant Richard Christmas.

Respondent denies that said Richard has any interest in said notes enjoined by complainants' bill; but this respondent, intending to be absent for a long period of time, so that he could not personally attend to his own business and property, gave to said Richard a written power of attorney to attend to the business and lawsuits of respondent.

JOHN D. FREEMAN,
Sol. for respondent.

UNITED STATES OF AMERICA, *District of California:*

Personally appeared before the undersigned, United States commissioner for the district of California, Harry H. Christmas, who on

202 oath states that the matters and things in said answer stated of his

own knowledge are true, and those stated on information and belief he believes to be true.

HARRY H. CHRISTMAS.

Sworn and subscribed before me this 31st day of June, A. D. 1869.

H. F. LARDNER,
U. S. Commissioner.

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

And on the 24th day of August, A. D. 1869, the defendant Mary E. Christmas, by her solicitor, John D. Freeman, came and filed her answer to the bill of complaint herein; and the same, with the exhibits thereto, is in the words and figures following, to wit:

In the circuit court of the United States and southern district of Mississippi.

JOHN W. RUSSELL ET ALS. *vs.* WILLIE LYONS ET ALS. } In chancery.

The separate answer of Mary E. Christmas to the bill of complaint herein.

This respondent, for answer to so much of said bill as she is
203 advised it is necessary for her to answer unto, answering says:

Respondent is the second wife of the said Richard Christmas, having married him in the year A. D. 1853, and her co-defendant, Harry Christmas, is a son of the said Richard by his first wife, Mary Emeline Christmas. The name of this respondent is Mary Eliza Christmas.

Respondent knows nothing of the alledged judgment against said Richard Christmas nor of the subsequent proceedings thereon, and hereby adopts the answer of the said Richard in these respects; admits that in latter part of 1865 and first part of 1866 said Richard sojourned in England and France; knows nothing of the alleged correspondence between said W'm Yerger and said Richard, and therefore adopts the answer of said Richard in respect to all matters concerning the same; knows nothing of the pretended assignment by said Richard of said Lyons' note for $16,666 66 to said Yerger, and so denies the same and calls for full proof.

Respondent, further answering, states that she knows nothing of the transfer of said Lyons' note for $16,666 60, alleged to have been made by said Richard to said Harry in May, 1866. Respondent was then in
Europe, and was not informed on this subject. But respondent
204 knows that in the year 1859 said Richard sold a plantation to said Willie Lyons for the sum of $80,000; $30,000 in cash, and the balance in three notes of said Lyons for $16,666 66 each, payable to bearer in one, two, and three years from the day of , 1860. Respondent was present at and heard a conversation between said Richard and said Harry H. at the plantation of the said Harry, in Issaquena Co., Missi., in the month of August, A. D. 1862. Respondent had been frequently informed by the said Richard and the said Harry that said Harry was the owner of the plantation on which the said Richard had resided for many years, and also of about seventy-four of the slaves, with their increase since the year 1841; that said Richard had

held the same in trust for said Harry, as stated in the answer of said Richard, and was then largely indebted to said Harry for the hires of said slaves, and the rents, issues, and profits of said plantation for many years. Respondent was present when the said Richard delivered to said Harry the three Lyons notes for $16,666 66, in the month of August, 1862, on said plantation in Issaquena Co., Missi., in part payment of a large sum then due by said Richard to said Harry.

205 Respondent knows also that said Harry retained possession of said three notes until about Jan'y, 1865, when he sent the same to said Richard, then at Matamoras, Mexico, to be held by said Richard in trust for said Harry and for safe-keeping during the war. Said Harry was then in the confederate service in Texas, and it was unsafe to retain said notes with him while in the service at that time. Respondent knows from said Richard and said Harry that said Richard was largely indebted to said Harry for the hires of said seventy-four slaves and their increase, and the use of said plantation, and for monies received by the said Richard for the sale of three tracts of land belonging to said Harry, and for a large amount or quantity of cordwood and cypress timber sold by said Richard from said plantation.

Respondent also knows that said Harry demanded of said Richard some security for said large debt due him by said Richard, and this debt was the consideration which induced said Richard to transfer to said Harry the three Lyons notes.

Respondent also heard of the death of said Harry at Matamoras in February, 1865, and did not learn to the contrary until the spring

206 of 1866, while in France.

Respondent returned to Louisville, Ky., on or about the day of , A. D. 1868, and remained at her residence near Louisville two months. The said Harry H. was also there, and informed respondent that he was indebted to Payne, Huntington & Co. for supplies and advances for his cotton plantation, which he was unable to pay at that time; that he had hypothecated with said Payne, Huntington & Co. a note due him by Willie Lyons for $8,339 90, and said Harry informed respondent that he feared said Payne, Huntington & Co. would sacrifice the whole of said note to pay his said debt to them, which was less than half of said note, and said Harry proposed to this respondent to assign said note to her on condition that she would furnish the money to pay said debt of said Harry to said Payne, Huntington & Co. The am't of said debt, as rendered by said Payne, H. & Co. on the 5th of March, 1866, was $3,599 54, as per letter of said P., H. & Co. to said Harry of that date, herewith filed, marked Exhibit No. 1 to this answer. And thereupon this respondent authorised her husband, the said Richard, to raise said money from the separate estate of this respondent, situate near Louisville, Ky.

207 Respondent had previously given to said Richard a power of attorney, whereby full power was given him to dispose of said separate estate for money, and reinvest the same. Said power of attorney is herewith filed, marked Exhibit No. 2 to this answer.

Respondent was subsequently informed that said Richard did sell twenty acres of respondent's land to raise the money to pay said debt of said Harry, and respondent refers to the depositions and proofs of said Richard and others in chancery case No. 46, H. H. Christmas et als. vs. Willie Lyons, for the particulars of this transaction, all of which has been ratified by this respondent. And so respondent says that said note of said Lyons to said Harry H. for $8,339 90 is now the property

of this respondent for the consideration aforesaid, and which she insists is a legal and valuable consideration.

And as to all the charges in said bill contrary to the foregoing statements, respondent denies the same.

And as to all other matters in said bill contained not hereinbefore admitted or denied, respondent for answer thereto hereby adopts the answer of her co-defendant, Richard Christmas, as her own answer to the residue of said bill of complaint.

JOHN D. FREEMAN,
Sol. for Respondent.

208 UNITED STATES OF AMERICA,
Southern District of Mississippi:

Personally appeared before the undersigned, United States commissioner for the southern district of Mississippi, John D. Freeman, solicitor for respondent, served with notice in this cause, who on oath states that respondent, Mary E. Christmas, is a non-resident of the State of Mississippi, and is temporarily residing in Dresden, in Saxony, in Europe. Affiant further states that he has made diligent inquiry as to the truth of the matters in the foregoing answer stated, and affiant states that the same are true, to the best of his knowledge, information, and belief.

JOHN D. FREEMAN.

Sworn and subscribed before me this 15th day of June, A. D. 1869.
[L. S.] GEO. A. SMYTHE,
U. S. Commissioner.

Filed and entered Aug. 24th, 1869.

G. T. SWANN, *Clk.*

Exhibit No. 1 to answer of Mary E. Christmas.

NEW ORLEANS, *March* 5, 1868.

Mr. H. H. CHRISTMAS.

DEAR SIR: In accordance with your orders in letter of 28th
209 ultimo, we send you statement of your account made up to date, showing due us $3,599 54.

You will observe that we have received from Col. Willie Lyons $479 61, which is to be credited on the note in the hands of Gen. Freeman, for suit—date of payment, 5th February, 1868—as per the credit in the account now sent you.

We have not heard further from Gen'l Freeman since we gave him the orders directed by you to prosecute the suit, except his answer to our communication, "saying he would attend to it," &c.

We hope you will at once arrange to place us in funds for this balance, as we failed to get your crop, except the thirty-three bales, as credited in the account.

Very respectfully,

PAYNE, HUNTINGTON & CO.

Exhibit No. 2 to answer of Mary E. Christmas.

Know all men by these presents that I, Mary E. Christmas, do hereby appoint my husband, Richard Christmas, now of Jefferson County, in the State of Kentucky, my true and lawful attorney in fact, for me and

in my name to sell, mortgage, encumber, pledge, and dispose of
210 the lands in said county which were mine by the devise of Thomas Philips to my father, or to his children, and a division thereof, by proceedings in the Louisville chancery court, or otherwise, my tract being about two hundred and ninety-five acres, and which land is held by said Richard as trustee for my sole use by deed of record in said county, and to make any deed thereof by sale or mortgage, or to lease or otherwise dispose of the same, or any part thereof, and to sell, mortgage, lease, or dispose of other parts from time to time, or of the whole, upon such terms, whether for cash or credit, or for other property or funds, as he may approve, and in such deeds to convey as trustee or as my agent, or both. And I hereby give my assent to such sales and conveyances, without responsibility on the part of the purchaser to see to the investment of the proceeds, which are to be held or invested by said trustee for my sole use, according to said deed. And I do further authorise my said agent, for me and in my name, to make, execute, and deliver my notes, bonds, or other writings for the payment of any sum or sums he may borrow for me, and my estate shall be liable for the same. And I authorise him to sell and dispose of the monies, bonds, notes, and property which he may have or hold as trustee for me under said
211 deeds or otherwise, either for other property, or for money, notes, or bills, as he may deem best; and hold, and dispose of such other property, notes, or bills again as often as may be, the investment, in whatever form, to be for my sole use under said deed. And I also authorise my said agent, for me and in my name, to make any contract or do any act in the premises which I could do in person, hereby ratifying such acts as mine.

Witness my hand and seal this seventh day of November, A. D. 1866.

M. E. CHRISTMAS. [SEAL.]

Signed, sealed, and delivered in presence of—
T. T. RANDOLPH.
J. M. HAND.

UNITED STATES CONSULATE,
Paris, Empire of France:

Be it known that, on this seventh day of November, one thousand eight hundred and sixty-six, before me, John G. Nicolay, consul of the United States of America, at Paris, in the Empire of France, personally appeared Mary E. Christmas, known to me the person named in, and who executed, the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein mentioned; and the said Mary E. Christmas, on a private examination by me, made apart
212 from her husband, acknowledged that she executed said instrument freely and voluntarily, and without any fear or compulsion of her said husband.

Witness my hand and seal of office the day and year above written.

[L. S.] JNO. G. NICOLAY,
U. S. Consul.

19,801. Rec'd $2 00.

And on the 25th day of August, A. D. 1869, came the defendant Fulton Anderson, administrator &c., of Warren P. Anderson, deceased, by his solicitors W. and J. R. Yerger, and filed his separate answer to the bill of complaint herein; which is in the words and figures following, to wit:

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET AL. } N. S., No. 86.—In equity.

The separate answer of Fulton Anderson, adm'r, &c., of Warren P. Anderson, dec'd, to the bill filed herein.

This respondent, answering, says that of his own personal knowledge he does not know anything of the allegations in the bill, but from information he believes the facts in reference to the matters in said
213 bill contained are truly set forth in the answer of his co-defendant, William Yerger, and, so believing, he adopts that answer as his own, and prays that it may be so considered; and that the relief asked in said answer in the premises be granted, &c.

W. AND J. R. YERGER, *Sol's.*

The jurat to the above and foregoing answer is waived, and the same may be taken and held as in all respects regular.

HARRIS AND WITHERS,
Sol'rs for Complainants.

Filed Aug. 25th, 1869.

G. T. SWANN, *Clk.*

And afterwards, to wit, on the 5th day of November, 1869, the following motion was made in this cause, to wit:

JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS ET ALS. } No. 86, N. S.

Motion by defendants Richard Christmas, H. H. Christmas, and Mary E. Christmas to dissolve the injunction herein on bill, answers of said defendants, and exhibits and proofs.

JOHN D. FREEMAN,
For the motion.

Filed and entered Nov. 5th, 1869.

GEO. T. SWANN, *Clerk.*

214 And on the 13th day of November, 1869, the following motion was filed and entered in this cause, to wit:

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } No. 86, N. S.—In chancery.

George L. Potter suggests that he has a lien for the sum of three hundred dollars, the amount of his fee, upon part of the funds in controversy in this suit, to wit, the judgment recovered May 21st, 1869, by H. H. Christmas, use Mary E. Christmas, vs. Willie Lyons, for $8,192 24, damages and costs mentioned in the bill of complaint herein, the said fee being the stipulated sum agreed to be paid him by said plaintiff for his services as one of the attorneys in obtaining said judgment; and thereupon moves that said amount be allowed and paid him out of the amount of said recovery, and that to that extent the orders made in this case be modified, and that, if necessary, execution may

issue upon said judgment against said Lyons to collect, for the use of said Potter, said sum of three hundred dollars.

GEO. L. POTTER,
Pro. per., for motion.

Filed and entered on motion docket, p. 26, Nov. 13th, 1869.
GEO. T. SWANN, *Clk.*

215 And afterwards, to wit, on the 15th day of November, 1869, the following order on the last foregoing motion was made by said court in this cause, and entered upon the minutes of said court, to wit:

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET AL. } No. 86, N. S.—In chancery.

Upon motion of George L. Potter, and it appearing that he is entitled to a lien on part of the funds in controversy in this cause, to wit, on the judgment recovered May 21st, 1869, in the name of H. H. Christmas, use Mary E. Christmas, vs. Willie Lyons, for $8,192 24, damages and costs, said lien being for the sum of three hundred dollars, the agreed amount of his fee as one of the attorneys for said plaintiff in recovering said judgment; and it appearing that the amount of said other judgment in said pleadings mentioned against said Lyons has been paid into court:

It is now, by consent of parties, ordered that said sum of three hundred dollars be now paid to said Potter out of said fund now in court; but this order not to prejudice the rights of complainants herein to recover the full amount of their claim out of the residue of said
216 fund paid into court, or out of said judgment in favor of said H. H. Christmas, use as aforesaid, or out of any other funds or person liable to the same.

Entered Nov. 15th, 1869, b'k 1, 286.

GEO. T. SWANN, *Clk.*

And on the 15th day of November, 1869, the following order was entered in this cause upon the hearing docket of said circuit court, to wit:

JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS ET AL. } No. 86, N. S.—In chancery.

Set for final hearing, by consent, on bill, answers, exhibits, and proofs.

Entered Nov. 15th, 1869.

And afterwards, to wit, on the 23rd day of November, 1869, the following amended bill of complaint was, by leave of court, filed in this cause, to wit:

UNITED STATES OF AMERICA:

In the circuit court of the United States, southern district of Mississippi, Nov. term, 1869.

The amended bill of William A. Gaines and Henry S. Julien, execu-

tors of the last will and testament of John W. Russell, (who has
217 died since the commencement of this suit,) Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas Lindsey, in his own right, and as administrator of Churchill Samuel, deceased, to their original bill filed in this court against Willie Lyons, William Yerger, Fulton Anderson, administrator of Warren P. Anderson, deceased, and John D. Freeman, respectfully states and shows that the complainants in said original bill claim to be substituted to the rights of defendants Yerger and Anderson to a note due by the said Lyons to Richard Christmas, upon the ground that said note had been pledged and assigned to said Yerger and Anderson to indemnify them as sureties of said Christmas on a writ of error bond, given in a proceeding which is particularly described in said original bill, and which is the foundation of the claim of said complainants against said Richard Christmas. The note of said Lyons and the claim of said complainants, together with the ground on which the same rests, are particularly set forth in said original bill, which is referred to for greater certainty.

Your orators further state that in said original bill it is not averred that, prior to said pledge and assignment of the note aforesaid, there was any specific promise or undertaking by the said Christmas to his
218 said sureties to secure them against their liability as such, but on the coming in of the answers of the defendants, and especially the answers of Richard and H. H. Christmas, that there was a distinct understanding to furnish such indemnity; and your orators, from inquiry suggested by the answers aforesaid, have ascertained, and now charge by way of amendment to said original bill, that, before the said Yerger and Anderson would consent to become the sureties of said Christmas as aforesaid, they exacted of him a promise to provide indemnity for them, and said Christmas thereupon undertook to indemnify them fully and completely; that in pursuance of said promise did furnish, as such indemnity, a draft on Messrs. Martin, Cobb & Co. for $13,000, drawn in favor of said Yerger and Anderson by said Christmas, which was vouched by a letter of credit of Martin, Cobb & Co., authorizing the drawing of the same.

Your orators further state that, subsequently and before the maturity of said draft, as your orators believe, the said Christmas, in order to carry out some settlement or arrangement with said Martin, Cobb & Co., besought said Yerger and Anderson to surrender said draft, promising to furnish other indemnity in lieu thereof; and your orators
219 believe and charge that, subsequent to the time of the surrender of said draft by said Yerger and Anderson, said Christmas having sold a tract of land to defendant Lyons, and obtained his notes for the purchase-money, indicated one of said notes, or the notes collectively, as the indemnity aforesaid, and promised to hold the same in trust for that purpose.

Your orators state that they were not apprised of these facts when the original bill was filed, and that the information on which they made inquiry and ascertained the facts above stated was first obtained from the answers aforesaid.

Your orators therefore pray that said defendants be required to answer this amended bill, and that they have all proper relief called for by the same.

HARRIS AND WITHERS,
Sol's for Complainants.

Filed, by leave of court, Nov. 23d, 1869.

GEO. T. SWANN, *Clk.*

And on said 23rd day of November, A. D. 1869, came the said defendants, Richard Christmas, H. H. Christmas, Mary E. Christmas, and John D. Freeman, by their solicitor, John D. Freeman, and filed
220 in said court their answers to the complainants' amended bill of complaint herein in the words and figures following, to wit:

UNITED STATES OF AMERICA:

In circuit court thereof, 5th circuit and so. dist. of Missi.

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } No. 86, N. S.

The answer of Richard Christmas to the amended bill of complaint in this cause.

And the said Richard, for answer to said amended bill, admits now, as he has done in his answer to said original bill, that he did indemnify said Yerger and Anderson as sureties on said writ of error bond in manner and form as stated in his original answer, and not otherwise; that said indemnity consisted of a draft on Messrs. Martin, Cobb & Co. for $13,000, as shown by the receipt of William Yerger, filed with respondent's original answer herein.

Respondent denies that before said draft matured he besought said Yerger and Anderson to surrender said draft to him for any purpose whatever; denies that respondent agreed or promised to furnish other indemnity in lieu of said draft; denies that respondent indi-
221 cated the Lyons notes, or either of them, as indemnity to Anderson and Yerger in lieu of said draft.

Respondent admits that said Yerger returned said draft to him, but not for the purpose of obtaining other indemnity. The fact was, that said draft was drawn upon said Martin, Cobb & Co., to be paid within a limited period, if required by said Anderson and Yerger. But said Anderson and Yerger had no occasion to use the money called for by said draft to indemnify them, as they were not called upon to pay anything for said respondent then, nor have they been called upon to pay anything for respondent since that time. The draft was voluntarily returned to respondent by said Yerger because the time within which the same was to be paid by Martin, Cobb & Co. had expired, and the said draft had become functus officio by lapse of time; and the said Yerger well knew that this respondent had then in his possession ample means to save the said Anderson and Yerger harmless on said writ of error bond, and did not exact of respondent any further special indemnity on that account.

Respondent denies all the allegations of said amended bill except as herein stated.

222 And the said H. H. Christmas and Mary E. Christmas, for answer to said amended bill, say that they, nor either of them, know nothing of the matters in said amended bill contained except as informed by the said Richard Christmas, and they therefore adopt the answer of the said Richard Christmas to said amended bill as their own answer.

And the said John D. Freeman, for answer to said original and amended bills, says he has no interest in the matter in controversy in this suit; that he knows nothing of the matters set forth in said original

and amended bills except what has come to him in his character as an attorney and counsellor of this court for said defendants Richard, Mary E., and H. H. Christmas, and he claims the protection of this court from being required to divulge the information obtained from his clients in that manner.

JOHN D. FREEMAN,
Sol. for Def'ts.

Filed Nov. 23rd, 1869.

GEO. T. SWANN, *Clk.*

And on the 23rd day of November, 1869, came the complain-
223 ants by their solicitors, Harris and Withers, and filed their replications to the answers of the defendants herein in the words and figures following, to wit:

In the circuit court of the United States, southern district of Mississippi.

JOHN W. RUSSELL ET AL.
vs.
WILEY LYONS ET AL. } No. 86, N. S.—In chancery.

And the said complainants, for replication to the answers of Richard Christmas, H. H. Christmas, William Yerger, and Fulton Anderson, defendants, says that, for anything, contained in said answers, the allegations of their said bill are nevertheless true, and so far as said answers may conflict with said allegations the same are untrue; and this the complainants are ready to prove at such time and in such manner as the court shall direct.

HARRIS AND WITHERS,
Sol'rs for Complainants.

JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS ET ALL. } No. 86, N. S.—In equity.

And the complainants, for replication to the answers of Richard Christmas, Mary E. Christmas, H. H. Christmas, and John D. Freeman to the amended bill filed by leave of court on the 23d day of No-
224 vember, 1869, come and say that the matters and things in said bill are true as therein set forth and alleged, and that the denials and traverse thereof in said answers are not true; and this they are ready to prove and maintain as the court shall direct.

HARRIS AND WITHERS.

Filed Nov. 23rd, 1869.

GEO. T. SWANN, *Clk.*

And on the 24th day of January, 1870, the following order in writing by counsel for defendants was filed in this cause, to wit:

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } No. 86, N. S.—In chancery.

The motions of def'ts at a former term to dissolve the injunction in

this case is hereby withdrawn, and the case set for final hearing by def'ts on bill, amended bill, answers, exhibits, and proofs.

JOHN D. FREEMAN,
Sol. for Def'ts.

Filed and set on hearing docket Jan. 24th, 1870.

GEO. T. SWANN, *Cl'k.*

And afterwards, to wit, at a special term of said circuit court of the United States for the fifth circuit and southern district of Mississippi, held at Jackson, in said district, at the court room of said court, on the 4th Monday, and the 24th day of January, A. D. 1870, pursuant to an order of said court duly made and entered of record at the November term thereof, 1869, and on the 29th day January, 1870, a day of said special term of said court, the following order was made and entered upon the minutes of said court, to wit:

225

JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS ET ALS. } No. 86, N. S.—In chancery.

On motion of defendants, by John D. Freeman, their solicitor, and by consent of the solicitors of complainants:

It is ordered by the court that the clerk deliver to said Freeman, solicitor of the defendants, the original Exhibit No. 23 to the answer of defendant Richard Christmas on leaving a certified copy of the same; which is accordingly done.

And afterwards, on the 3rd day of February, A. D. 1870, the same being a day in said special term of said circuit court of the United States for the fifth circuit and southern district of Mississippi, begun and held at Jackson on the 4th Monday, and 24th day of January, A. D. 1870, the following order pro confesso was taken in this cause, and entered upon the minutes of said court, to wit:

226

J. W. RUSSELL ET AL.
vs..
WILEY LYONS ET AL. } No. 86, N. S.

In this cause, it appearing that Wiley Lyons, one of the defendants, has been duly served with process of subpœna, and has failed to enter his appearance, or to plead, answer, or demur to the original and amended bills in this cause:

It is ordered that the same, and the matters and things therein contained, be taken as confessed, and the cause set for hearing as to him ex parte.

Feb. 3, 1870, entered book 1, 327.

G. T. SWANN, *Cl'k.*

And on the 3rd day of February, A. D. 1870, at said special term, begun and held as aforesaid, the following agreement of counsel and order to revive was filed in this cause and entered upon the minutes of said court, to wit:

JOHN W. RUSSELL ET AL.
vs.
WILEY LYONS ET AL. } No. 86, N. S.

227 In this cause it is agreed by the solicitors of complainants and

defendants in open court, that the answer filed by the sol'r for defendant Mary E. Christmas shall remain on file as an unsworn answer in the cause, and to have no other effect than as an unsworn answer; and that the affidavit of said John D. Freeman, the solicitor aforesaid, to said answer be withdrawn, and that said answer be considered as replied to by the complainants at the date of the replication filed to the answers of H. H. and Richard Christmas; the answers to the original bill shall stand as answers to the amended bill also. And on the suggestion of the death of John W. Russell since the commencement of this suit, it is further agreed that the executors of said Russell, to wit, William A. Gaines and Henry S. Julien, be made parties to said suit, without bill of revivor or process of any kind; and that the suit may stand revived in their names in the same plight and condition which it stood at the death of the said John W. Russell; and that the same shall proceed in their names to hearing.

228 On the final hearing of this cause in the said circuit court of the United States for the fifth circuit and southern district of Mississippi the following testimony and proof was introduced and read to the court on behalf of the complainants therein, to wit:

Deposition of A. Burwell.

The deposition of A. Burwell for complainants, taken by consent of parties, to be read on the trial of the case of John W. Russell et als. vs. Willie Lyons et als., pending in the circuit court of the U. S. for the southern district of Missi., at Jackson, on the chancery side thereof.

1st. Do you know the parties to this suit?

2d. Look at the documents filed as proof in this case, purporting to be the record of proceeding in the circuit court of the U. S. for the southern district of Mississippi, and state whether you recollect the suit to which said record purports to apply.

3. State whether or not you knew the terms on which Richard Christmas obtained sureties on his writ of error bond in the case mentioned in the previous interrogatory.

4th. Look at receipt marked Exhibit 2 to the answer of Richard Christmas in this cause, and state what you know, if anything,
229 of the letter of credit and draft mentioned therein, and the disposition of the same; if surrendered or released, by whom and on what terms.

5th. State, if you know, any other matter or thing touching the subject of this examination which may be material to the matters thereof, or to the issue in this cause, or of benefit to either party to the same. If yea, set forth the same fully and at large in your answer.

HARRIS AND WITHERS,
Sol'rs for Compl'ts.

Answers of A. Burwell to interrogatories in the case of John W. Russell et al. vs. W. Lyons et al., pending in the circuit court of the United States for the southern district of Mississippi, in chancery.

To 1st int. by compl'ts. I am acquainted with W. Lyons, Richard Christmas and wife, and H. H. Christmas. I do not know the other parties.

To 2nd. I was the attorney of R. Christmas in the suit referred to in

this question, and recollect the suit, of which the document filed is a transcript.

To 3rd. R. Christmas obtained the signatures of W. Yerger and W. P. Anderson as sureties on the writ of error bond by agreeing to
230 indemnify them, and he gave them a draft on Martin, Cobb & Co. for about thirteen thousand dollars, being near the amount of the judgment.

To 4th. I do not know by whom the draft was surrendered or released, nor the terms. I have examined Exhibit 2. I recollect the draft being given, and it was authorised by a letter of credit from Martin, Cobb & Co.

To 5th int. I believe I have stated all I know in regard to the subject material to either party.

A. BURWELL.

Cross-interrogatories to A. Burwell by counsel for Harry H., Mary E., and R. Christmas.

X 1. You have said that you were acquainted with def'ts Harry H., Mary E., and R. Christmas. State whether or not said Richard Christmas has had more than one wife. If yea, what was the name of the first wife; and what children, if any, had said Richard by said first wife? State the names and ages of said children, if any. Is said first wife of said Christmas living or dead? If dead, when did she die, and what heirs did she leave?

X 2nd. If you have said that the first wife of said Richard is dead, state whether she left any separate estate; and, if yea, of what did said estate consist, and to what heirs of hers did the same descend?

231 X 3rd. Look at the answer of Richard Christmas herewith shown you, setting forth the trust estate of the said Harry H. Christmas, formerly in the hands of said Richard, and state anything you may know as to the estates of Mary E. Christmas, first wife of said Richard, and of William Hardeman Christmas and Harry H. Christmas.

X 4th. Look at the three promissory notes of Willie Lyons to Richard Christmas for $16,666 each, dated Nov. 30th, 1859, and filed with the deposition of William Yerger in this cause, and state whether or not said notes were ever placed in your hands for settlement. If yea, who placed said notes in your hands; who were the owners of said notes? and if any settlement of the same was made, state who was present at said settlement; who made or procured said settlement to be made; what were the terms of said settlement; what amount of said notes, if any, was paid in money, and to whom; what amount secured by notes, if any, and to whom payable; what portion of said notes, if any, was agreed to be remitted or left unpaid. State all the particulars of said settlement, and whether or not the same is correctly stated in the answer of Richard Christmas in this cause, herewith shown you.

232 X-int. 5. Did the defendant Richard Christmas in any manner interfere with, direct, or control said settlement?

JOHN D. FREEMAN,
Sol. for Def'ts.

Answer to x-int. 1st. Richard Christmas has had two wives, both named Mary E. His first wife died in 1841. By the first wife Richard Christmas had two children—William Hardeman, who died in 1841, and Harry Hill Christmas, one of the defendants. Mrs. Christmas left two children, and by the death of his brother Harry Hill Christmas became the sole heir of all the estate of his mother and brother.

To 2nd. Mrs. Christmas, the first wife, claimed and was reputed to be the owner, as her separate estate, of negroes, (number not recollected,) which she obtained in part under the will of one D. L. Horne, and in part under a deed to Benjamin D. Smith. The first Mrs. Christmas was the owner of lands in the State of Tennessee, the proceeds arising from the sale of which were received, as I was informed and believe, by Richard Christmas, and the deed to B. D. Smith was given to secure the money due Mrs. Christmas for her land so sold. I have seen
233 deeds and papers which stated the facts as above. All the separate estate descended to Harry Hill Christmas, the defendant. The deeds and will referred to are Exhibits 10 and 11 to answer of Richard Christmas.

To 3rd. I have seen the answer of Richard Christmas. I know that Harry R. W. Hill, late of New Orleans, executed a deed of conveyance, or several deeds, (Exhibits 5, 6, and 7 to answer of R. Christmas,) by which he conveyed a valuable tract of land in Issaquena to Richard Christmas, trustee, for the benefit of Harry Hill Christmas. When I first knew the place—say in 1840, or about that time—there were some 700 to 900 acres of cleared land. I think I rented the place in 1866 from Harry Hill Christmas, and there were then some 1,500 to 1,700 acres of cleared land. I did not cultivate it all. The land is very fine, and worth as much as any land on the Mississippi River. Richard Christmas occupied the land and received the proceeds of crops, and also the purchase-money, from Mrs. Moore, about $7,500; from W'm Myers, about $10,780; from W'm Towner, about $8,000. I was frequently on the plantation, and saw large amounts of wood hauled to the landing for sale, and cypress timber, but I do not know the quantity. The amount
234 was large, and the business of selling wood and timber was kept up for several years. My opinion, from an acquaintance with the tract of land and the value of such land, is that the same was well worth, on an average, from 1847 to 1861, at least five thousand dollars per annum nett; that is, the tenant to make repairs and pay taxes and charges. I have resided in the cotton region since 1834, and in Mississippi since 1837, and have owned and cultivated lands for many years on and near the Mississippi.

To 4th x-int. I have looked at the notes referred to. I received the notes in 1866 from Harry Hill Christmas, accompanied by letters from Martin, Cobb & Co., and A. O. and J. S. Brannin, of Louisville, to whom Richard Christmas was indebted in about the sum of $10,000. I acted as the attorney of Martin, Cobb & Co. and A. O. and J. S. Brannin to collect their debts from W. Lyons. Harry Hill Christmas and W. Lyons came to my office in Vicksburg, and a compromise and settlement were made between them, Lyons paying to me the amount due, as above stated, to Martin, Cobb & Co. and A. O. and J. S. Brannin, and paying to Harry Hill C. about $8,000 cash, and giving him two
235 notes, each for $8,339 90, which payments Harry Hill Christmas agreed to receive, and did receive, in full of the debt due by the three notes, which amounted, principal and interest, to about $57,000. Harry Hill Christmas had the notes in his possession, and claimed subject only to the payments to be made to Martin, Cobb & Co. and A. O. and J. S. Brannin. The new notes given by W. Lyons were made payable to Harry Hill Christmas, and delivered to him at the time of settlement. I have stated the particulars of the settlement, and think the statements of Richard Christmas' answer in regard to dates and amounts of payments and abatements are correct. I advised Harry Hill Christmas not to make so large an abatement on the debt, but he

the whole truth, and nothing but the truth. deposed and answered to the annexed interrogatories as follows, to wit:

Questions to be asked Willie Lyons:

1. Are you acquainted with the parties to this suit?

2. State whether or not William Yerger, in the fall of the year 1865, and prior to January, 1866, had any conversation with you relative to a note for $16,666, or thereabouts, due by you to Richard Christmas, and what that conversation was, and when it occurred.

3. Did or did not said Yerger at that time show you a letter
241 from Richard Christmas, written in Liverpool, relative to that note; and did or did not said Yerger then claim said note, as assigned by said Christmas to him to indemnify him and Warren P. Anderson as sureties of Richard Christmas, and notify you that he would claim payment of the same, to indemnify him as the security of said Christmas? State fully all that was said or done in this connexion by said Yerger, and when it occurred.

4th. After you had given new notes to said Christmas in renewal of the original notes given by you, did you inform said Yerger of such renewal, and when did you inform him? Did he or not, when first informed of such renewal, notify you that he would claim said notes as his indemnity as surety of said Christmas, and notify you not to pay to Christmas, or any one else, till he was relieved from liability as the surety of said Christmas?

5th. Has or not said Yerger repeatedly, since the fall of 1865, and in every conversation he has had with you about said notes, notified you that he claimed said notes as his indemnity as the security for said Christmas, and notified you that he would never permit you to pay them to any one till he was relieved; and that, if necessary, he would take the necessary legal steps to prevent your paying to any one till
242 he was relieved from liability?

6th. State in what way and under what circumstances you came to give the notes to Harry Hill Christmas in renewal of the original notes to Richard Christmas, and when and where that transaction took place, and who was present; and state what occurred at the time of the settlement with Harry Hill Christmas, and whether or not he would settle with you in any way without first consulting Richard Christmas. State in this connexion all that was said or done by Harry Hill Christmas.

Inter'y 7th. State whether or not you ever had any conversation with John D. Freeman or with Richard Christmas relative to the judgments obtained against you on the substituted notes; and, if so, state the conversation, and who was present, particularly in the conversation had with Richard Christmas, if you answer one was had.

Answer to 1st interrogatory. I am acquainted with all of the defendants, and think I have seen Thomas H. Lindsey.

Answer to 2nd int. I had a conversation with W'm Yerger in the fall of the year 1865, about the month of December, relative to three notes of $16,666 each, or thereabouts, due by me to Richard Christmas.
243 Upon one of these notes was a credit of over $12,000 00. This conversation was about these notes, and occurred in the following way: Mr. A. Burwell, during the year 1859, informed me that Richard Christmas had a plantation for sale in Bolivar County, on the bank of the Mississippi River. I inquired of him something relative to the titles to this plantation. He said that a short time previous to that he had

occasion to examine the title, the object of which was for the purpose of securing a debt by deed of trust or mortgage to Martin, Cobb & Co., which debt, I think, Mr. Burwell said was about $30,000. I then went to the residence of Richard Christmas, in Issaquena County, in this State, made some inquiry about the property, and finally, upon examining the property, I purchased the property at $80,000. Thirty thousand dollars I paid in cash, which amount both Christmas and Burwell said was to be paid over to Martin, Cobb & Co. for the purpose of lifting the deed or mortgage given to Martin, Cobb & Co. Mr. Burwell stated that this transaction perfected the title, and that I might look to him for the perfection of the title. Shortly after that I paid off a judgment against Christmas for upwards of $12,000, and this am't was credited upon one of the notes, as before stated, and mentioned in answer to int. 2,
244 9th line. In the fall of 1865 I applied to A. Burwell to know where the notes were. He said that he did not know exactly where they were. He thought Judge W'm Yerger could tell me. I accordingly applied to Judge W'm Yerger for information in regard to the whereabouts of the notes. A. Burwell informed me that he was Mr. Richard Christmas' lawyer, and had done a great deal of business for him, and through Mr. Burwell I purchased the plantation. Upon my way from Vicksburg to Canton I stopped at Jackson and saw Judge Yerger. He remarked to me that he had just received a letter from Richard Christmas, and that the notes were either in Louisville or New York, I am not positive which; I think, though, he said New York. Judge Yerger stated that he, Christmas, had left the notes (wherever they were) for the purpose of indemnifying himself and the estate of Warren P. Anderson as sureties upon an appeal or writ of error bond for Mr. Christmas, and that he, Judge Yerger, intended to hold so much of these notes as would secure them as sureties upon this bond.

(The answer to 2nd interogatory is objected to by counsel for defendants because the same is irresponsive, and not called for by the
245 interrogatory and statements of his co-defendants William Yerger and A. Burwell.)

Answer to 3rd int. (Interrogatory is objected to by counsel for defendants because the letter referred to is not produced.) Judge Yerger did read a letter purporting to be from Richard Christmas. I did not read the letter or any part of it. He said that he claimed so much of the notes as would indemnify him and Warren P. Anderson as sureties upon the bond of Richard Christmas. This was the only notice given me. If he had given me what I considered legal notice, I don't know that I would have gone on to have made payments upon the notes. For further answer I refer to answer to interrogatory 2nd. This all I recollect.

Answer to int. 4th. I did inform Judge Yerger of the said renewal. The information was given after the renewal and before suit was brought on the renewed notes. I mean the notes upon which judgment was obtained against me in the circuit court of the United States for the southern district of Mississippi. I don't think he did notify me not to pay them, but asked me if I was then prepared to pay them. I said I was not; I am afraid I will be sued upon the notes; and, if I am, I want you (Judge Yerger) to attend to the suit for me; that I
246 wanted the judgment postponed as long as possible, until I could make some collections. Judge Yerger then said that he would stop the money in my hands until he was relieved, and until the estate of Warren P. Anderson was relieved; that he had got Warren P. Anderson into the scrape.

(Question and answer objected to by counsel for defendants Richard, Mary E., and H. H. Christmas, on the ground of impertinence, and because said defendants had no notice of said conversation.)

Answer to 5th int. (Question objected to by counsel for defendants, the Messrs. Christmas, because the same is a leading question, and said conversation was held between Yerger and Lyons, if held, without notice to said defendants, and was not binding upon them.) Judge Yerger has repeatedly told me, and has repeated it in every conversation, that he would stop the money in my hands, and that, if necessary, he would take legal steps to do so, until he was relieved, and also the estate of Warren P. Anderson, from liability.

Answer to 6th int. Harry Hill Christmas came to Vicksburg with the three original notes, herewith filed and made a part of this answer, marked Exhibit A. He said that these notes had been trans-
247 ferred by his father to him, and then and there showed me the notes, and that he was then ready to go into a settlement with me. He asked me how much money I would give him then upon the notes. I made this offer, viz, twenty-five thousand dollars for the three notes; eight thousand dollars in money, and to take up a claim that Martin, Cobb & Co. held on those notes for $5,000, with interest at 8 per cent. from 1st day of October, 1865, and a claim held by A. O. and J. S. Brannin on those notes for $4,695 07, with interest thereon at 8 per cent. from 27th day of March, 1866. The balance of the $25,000 I offered him in one and two payments. Mr. H. H. Christmas refused my proposition, but said would write to his father to see what he would say about my proposition above stated. Some short time after that time (some few weeks after) I met Mr. H. H. Christmas, when he told me he could not take my offer for the claim; that he considered the debt good, and was not willing to take $25,000 for the claim. I then made a calculation of the principal and interest, and found it more than I expected, a good deal. I then offered him $35,000 in the same payments, which he accepted—meaning to divide the balance, after paying the $8,000 00 cash, and the claims of Martin, Cobb & Co. and Bran-
248 nin & Co., into two payments. For this balance of $16,679 80 I gave my two notes for $8,339 90 each, or about that amount. All this took place in Vicksburg. At the time the settlement was made Mr. H. H. Christmas and Mr. A. Burwell were present with me. Upon a calculation of my indebtedness upon the three original notes, I found that the total amount was largely over $50,000 00. Mr. Burwell represented himself as the attorney of H. H. Christmas, Martin, Cobb & Co., and Brannin & Co. Mr. Burwell sent to me, at Canton, in a letter, the paper marked "B," and handed me the document marked "C" at the time of the settlement. After I had paid the $8,000 to H. H. Christmas, Mr. Burwell handed me the document marked "C," at the court-house in Vicksburg, and I think he wrote the receipt then.

(Documents "B" and "C" herewith as a part of this answer.)

(Defendants' counsel objects to filing document "B," because the same is a letter to the witness from A. O. and J. S. Brannin, and Martin, Cobb & Co., neither of whom are parties to this suit, and to which the other defendants to this suit have had no notice, and because the same is impertinent. Defendants' counsel objects to document "C," because the same is a letter to A. Burwell as attorney for A. O. and J. S. Brannin, and Martin, Cobb & Co., and of which the defendants,
249 Messrs. Christmas, have had no notice, and the same is impertinent.)

Answer to 7th int. I had, during the summer of 1869, a conversation with John D. Freeman relative to the judgment obtained

against me on the substituted notes. I stated to Gen'l Freeman that a friend of mine, living near Canton, proposed to let me have some money for the purpose of paying the judgment against me for upwards of $9,000, and wanted to know how I could secure him in the use of his money. I then said to my friend, Mr. Ballou, "Go to Jackson, see Gen'l Freeman, and buy the judgment," which I thought would be his best security. He said it was not convenient for him to do so, but told me to go to Jackson, and make the best arrangement I could for him in the purchase of the judgment. I then went to Gen'l Freeman's office, in Jackson, and offered him, on the part of my friend, $7,500 for the judgment. Gen'l Freeman declined taking the offer, saying that he had not the authority of his client to take this amount for the judgment. Some time after that Gen'l Freeman's partner, living in Canton, Mr. McMickin, in conversation with me about this judgment, and about the amount of $7,500, offered by me for my friend, Mr. Ballou, advised me to go to see Gen'l Freeman again, and perhaps I could make an
250 arrangement to buy the judgment. I came to see Gen'l Freeman, and found him in his office in company with Richard Christmas. After the conversation with Mr. McMickin, and before I saw Gen'l Freeman, I was served with a garnishment, and notified not to pay over this money to any one, unless by order of court. When I went to Gen'l Freeman's office, as above stated, we had a general conversation about this debt, all three of us participating. I remarked to Mr. Christmas that I was sorry this suit had been brought; that it could have been settled without. Mr. Christmas said he thought so too, and that if I had called on him I should have had an extension of time; that his wife was not in debt; that she held one of the notes, and his son H. H. Christmas held the other; that his son wanted a part of the note he held, wanting to go into some kind of business. Mr. Christmas said that he was not apprised of the fact that Mr. Ballou was to have become the purchaser of the judgment, but that he thought that I had $7,500 to pay, and that if I could pay that much, I could easily pay the balance, or could make some satisfactory arrangement to pay the balance.

(Defendants' counsel objects to both the question and answer, because the question is impertinent to the issues, and the answer irrelevant.)

251 *Exhibits A to deposition of Willie Lyons.*

$16,666. NOVEMBER 30TH, 1859.

Three years after the 20th day of December next, (1859,) I promise to pay Richard Christmas or bearer sixteen thousand six hundred and sixty-six dollars, value received, payable at the counting-house of Payne and Harrison, New Orleans, La., and bearing eight per centum per annum interest from the 20th day of December, 1859, until paid.

WILLIE LYONS.

(Indorsed:) Paid.

H. H. CHRISTMAS.

(Endorsed:)

Mr. WILLIE LYONS:

Pay of the within note the sum of four thousand six hundred and ninety-five $\frac{07}{100}$ $ only to A. O. and J. S. Brannin, with interest, at eight per cent., from 27th March, 1866, and only to Martin, Cobb & Co. the sum of five thousand dollars, with interest, at eight per cent., from 1st

October, 1865, till paid. The like endorsement is made on each of three notes, but the payment of one according to the tenor hereof cancels all.

R. CHRISTMAS.

I assign the within to Harry Hill Christmas.
Ex. A. R. CHRISTMAS.

$16,666 00. NOVEMBER 30TH, 1859.

Two years after the 20th day of December next, (1859,) I promise to pay Richard Christmas or bearer sixteen thousand six hundred and sixty-six dollars, for value received, payable at the counting-house
252 of Payne and Harrison, New Orleans, La., and bearing eight per centum per annum interest from the 20th day of December, 1859, until paid.

WILLIE LYONS.

(Endorsed:)

Mr. WILLIE LYONS:

Pay of the within note the sum of four thousand six hundred and ninety-five $\frac{97}{100}$ only to A. O. and J. S. Brannin, with interest, at eight per cent., from 27th March, 1866, and only to Martin, Cobb & Co. the sum of five thousand dollars, with interest, at eight per cent., from 1st October, 1865, till paid. The like endorsement is made on each of three notes, but the payment of one according to the tenor hereof cancels all.

R. CHRISTMAS.

I assign the within to Harry Hill Christmas.
Ex. A. R. CHRISTMAS.

$16,666 00. NOVEMBER 30TH, 1859.

Twelve months after the 20th day of December next, (1859,) I promise to pay Richard Christmas or bearer sixteen thousand six hundred and sixty-six dollars, value received, payable at the counting-house of Payne and Harrison, New Orleans, La., and bearing eight per centum per annum interest from the 20th day of December, 1859, until paid.

WILLIE LYONS.

I waive the statute of limitations and prescription on above note. June 5th, 1866.

WILLIE LYONS.

253 (Endorsed:)

Paid on the within *drafts* by W. Lyons, by drafts on Payne and Harrison, seven thousand dollars, as cash, 17th December, 1860, and five thousand three hundred and twenty-seven $\frac{19}{100}$ dollars, as cash, 20 March, (instant,) 1861.

7,000	17 Dec., '60.
5,327 19	20 M'ch, '61.
12,327 19	

A. BURWELL.

Mr. WILLIE LYONS:

Pay of the within note the sum of four thousand six hundred and ninety-five $\frac{07}{100}$ only to A. O. and J. S. Brannin, with interest, at eight per cent., from 27th March, 1866, and only to Martin, Cobb & Co. the sum of five thousand dollars, with interest, at eight per cent., from 1st October, 1865, till paid. The like endorsement is made on each of three notes, but the payment of one according to the tenor hereof cancels all.

R. CHRISTMAS.

I assign the within to Harry Hill Christmas.
Ex. A.

R. CHRISTMAS.

Exhibit "B."

LOUISVILLE, *May 8th*, 1866.

WILLIE LYON, Esqr., *Canton, Missi.*

D'R SIR: You will please take notice that *that* your three notes, at twelve months, two years, and three years, after 20th Dec.,
254 1859, with interest, at eight (8%) per cent., from 20th Dec., 1859, to Richard Christmas, have been endorsed for our benefit to secure to A. O. and Jno. S. Brannin four thousand six hundred and ninety-five $\frac{07}{100}$ dollars, ($4,695 07,) with 8% interest from 27th March, 1866, and to Martin, Cobb & Co. five thousand dollars, ($5,000,) with 8% interest from 1st October, 1865, in settlement of a suit against Rich'd Christmas. Said notes have been delivered to Rich'd Christmas' son, Harry H. Christmas, to collect. The first money on the said notes, or either of them, sufficient to satisfy the above claims is to be paid to us, and you must see that it is so done, or to our attorneys, at Vicksburg, Miss., whose receipt will be good for the same.

Y'rs, very truly,

A. O. AND JNO. S. BRANNIN,
MARTIN, COBB & CO.,
In Liquidation.

Mailed on the 9th May, 1866, in the Louisville post office, directed to Willie Lyons, at Canton, Miss.

JOHN J. TYLER.

(Endorsed:)
A. O. and J. S. Brannin. Martin, Cobb & Co. Notice to Willie Lyons.

255 DEAR SIR: From within notice you will perceive that I am appointed atto. of parties to receive payments on the notes due Christmas.

Yours, truly,

A. BURWELL.

Exhibit "C."

LOUISVILLE, *May 9th*, 1866.

A. BURWELL, Esq., *Attorney, Vicksburg, Miss.*

DEAR SIR: We hand you enclosed copy of contract, signed by ourselves, Martin, Cobb & Co., Rich'd Christmas, and Harry H. Christmas, from which you will see that Willie Lyons' notes (3) for $16,666 have

been delivered to Harry H. Christmas for collection, out of which Messrs. A. O. and J. S. B. are to be paid, and M., C. & Co. are to be paid (first;) the former, $4,695 07, with 8% int. from 27th March, 1866; the latter, $5,000, with 8% int. from 1st October, 1865; also copy of letter written to Willie Lyons, and duly mailed, notifying him of the endorsement on the notes, and warning him against paying any one but ourselves, or you as our attorney. Please look to the matter for us. We have no doubt that Lyons will pay the notes, and we trust you will be able to transmit us the money very soon.

Y's, very truly,

256 A. O. AND JNO. S. BRANNIN,
MARTIN, COBB & CO.,
In Liquidation.

Mailed on the 9th inst., in the post office at Louisville, by us, directed to A. Burwell, Vicksburg, Missi.

JOHN J. TYLER.

(Endorsed:)

Received, of W. Lyons, drafts on Payne, Huntington & Co., of New Orleans, in full of the within claims, to wit:

One in favor of Martin, Cobb & Co..... ..... $5,475 80
One in favor of A. O. and J. S. Brannin..... $5,251 28
June 22, 1866.

A. BURWELL, *Atto.*

Cross-interrogatories of J. D. Freeman, counsel for defendants Christmas.

1st. In your answer to your 4th int. in chief you say you did inform Judge Yerger of the renewal of said notes. Did said Yerger make any objections to said settlement and renewal?

Answer. I have no recollection of his making any objections whatever.

2nd. After the conversation above referred to with Judge Yerger, did you or not speak with him again in reference to said notes before suit was brought upon them; and, if yea, how long before?

Answer. To the best of my recollection, the matter was never mentioned between us before suit was brought.

257 3rd. Did you ever converse with Judge Yerger about said notes, or did he give you any other notice in regard to said notes than that stated in your answer to 2nd int. in chief?

Answer. He never did, to the best of my recollection.

4th. Did you employ Judge Yerger to defend the suits on said notes before or after the suits were brought?

Answer. I said to Judge Yerger that, if suits were brought, I wished him to attend to them. I had failed in making a crop, and believed suits would be brought, and I had rented out my plantation for the purpose of paying the debt. The party to whom I rented failed in a crop I therefore believed I would be sued.

5th. Did you or not state to J. D. Freeman (counsel for H. H. and Mary E. Christmas) that, if suits were brought upon the two notes held by them respectively, *that* the suits would be injoined, and that said parties would never recover any of the money on said notes?

Answer. I stated to Gen'l J. D. Freeman that, if suits were brought and judgments obtained, I believed I would be injoined from paying

that debt over to him, and that my opinion was, he would never recover the money; and I formed that opinion from what Judge Yerger,
258 my counsel, said to me. I considered that Gen'l Freeman was representing H. H. and Mary E. Christmas.

Int. 6th. Did you or not hold out to said Freeman, as counsel for those parties, and as an inducement to compromise said claims for a less amount than the judgments called for, that said judgments would certainly be injoined, and the money lost to H. H. and Mary E. Christmas?

Answer. I did not. The only compromise I offered was to pay $7,500 00 for another party, and with another party's money.

Int. 7th. At the time you proposed to said Freeman the payment of $7,500 00 for one of said judgments, did you or not say that if the same was not accepted the payment of the judgment would be injoined, and the money lost to the plaintiff in the judgment?

Answer. I did say that I believed the judgment would be injoined, and the money would not be recovered, forming my opinion from what my counsel, Judge Yerger, told me.

Int. 8th. Were you or not informed at that time by what parties said judgments would be injoined; if yea, state what parties.

Answer. I was informed by Judge Yerger what parties would enjoin. Jno. W. Russell and others were the parties.

259 Int. 9th. Did or not Harry Hill Christmas, when he came to Vicksburg with the three notes described in your answer to 6th interrogatory in chief, claim them as his own property, and did you or not settle with him for said notes as his own property, saving only the amounts due to Martin, Cobb & Co. and the Brannins, as endorsed on the backs of the same?

Answer. I did go into the settlement with H. H. Christmas, supposing that the notes were his property, finding his father's endorsement on the notes. I do not remember whether he did or did not claim them as his own property.

Int. 10th. Did or not the said H. H. Christmas state to you that he was in great want of the money on said notes to enable him to engage in planting, or language to that effect?

Answer. He stated to me that he was in great need of money to go into business in Saint Louis, but not to engage in planting.

Int. 11. Did any other person or persons than yourself, H. H. Christmas, and A. Burwell participate in the settlement of the said three notes referred to in your answer to 6th int. in chief?

Answer. No other person or persons were present or participated in the settlement, that I know of.

260 Int. 12th. Did any other person attempt in any manner to influence you in the making of said settlement?

Answer. No other person attempted to influence me in making the settlement.

Int. 13th. What amount of the sum due on said three notes was left unpaid by the terms of said settlement, as stated by you in your answer to 6th int. in chief?

Answer. I agreed to pay thirty-five thousand dollars in the manner above stated for the three original notes, and that sum was accepted as payment for the sum-total due on the three notes filed as Ex. A to this.

Int. 14th. In your answer to 7th int. in chief you speak of the conversation with Richard Christmas in regard to the judgments obtained against you by his son and his wife. Did or not the said Richard Christmas speak of said judgments, the one as the property of his son, H. H. Christmas, and the other as the property of his wife?

Answer. He did.

Int. 15th. Has or not the said J. D. Freeman, in his conference with you, claimed that the said notes, and the judgments thereon, were the property of the said Harry and the said Mary E. Christmas, respectively?

Answer. I do not remember whether he did or not.

261 Int. 16th. Has or not the said Freeman told you, in repeated conversations in regard to said notes and judgments, that he was acting as counsel for the said H. H. and Mary E. Christmas?

Answer. Don't know whether he did or not, but always understood from him that he was acting as their counsel.

Int. 17th. Did any persons other than H. H. Christmas, and A. Burwell, as counsel for Martin, Cobb & Co. and the Brannins, procure from you the settlement of the said three notes referred to by you in your answer to 6th int. in chief?

Answer. No other persons.

Int. 18th. Did the said H. H. Christmas represent to you that, in the making of said settlement, he was collecting the money due to him by the terms thereof for any other person than himself?

Answer. I don't think he stated to me for whom he was collecting the money. In making or trying to make the settlement he frequently asked time to consult his father.

And further this deponent saith not.

WILLIE LYONS.

And I do further certify that the preceding deposition was reduced to writing by me, and signed by the said Willie Lyons, and that I
262 am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

JAMES D. STEWART,
United States Commissioner, &c.

Filed 13th Nov., 1869.

GEO. T. SWANN, *Clerk.*

Opened by consent Dec'r 4th, 1869.

W. YERGER.
J. D. FREEMAN.

Commissioner's fee	$15 00
Witness' fee, two days' attendance and mileage	10 80

Deposition of William Yerger.

Interrogatories and cross-interrogatories to be propounded to William Yerger, a witness for complainants, in a suit in equity pending in the circuit court of the United States and so. dist. of Miss., at Jackson, Missi., wherein Jno. W. Russell et als. are complainants and Willie Lyons et als. are defendants.

1st. Do you know the parties to this suit?

2nd. State whether you know of the suit of Russell et al. vs. Richard Christmas mentioned in the complainants' bill, and were you one
263 of the sureties on the writ of error bond, as therein stated. If yea, state all the circumstances connected with the execution of said bond, and particularly, if you know, the conditions on which W. P. Anderson became a co-surety with you.

3rd. Look at the paper marked Exhibit No. 2 to the answer of Richard

Christmas, and say whether you recognize it as in your handwriting, and state your recollection as to the disposition of the draft and letter of credit therein mentioned.

4th. Look at the series of letters mentioned in the answer of Richard Christmas in this cause, and state whether you received those letters, and whether or not you regarded and understood them in the light of a compliance with the original promise of Christmas to furnish indemnity to yourself and W. P. Anderson as his sureties, and did you accept them as such and act on them as such?

5th. Did you confer with Willie Lyons on the subject of the letters referred to in the previous interrogatories; and, if so, in what capacity, whether or not as a party having an interest, legal or equitable, in the note of which mention is made in the letters mentioned in previous interrogatories?

6th. Why did you consent to be governed by the instruction of Richard Christmas in conducting *negotions* with Lyons?

264 7th. Have you ever seen or had possession of the Lyons note or notes? If you have possession now of the note or notes, append them to this answer, with any other documents explanatory thereof, and state the circumstances under which you received the same.

8th. Do you know what was the pecuniary condition of Richard Christmas in 1848 and 1849? If yea, state what it was.

HARRIS AND WITHERS.

Cross-interrogatories for def'ts Harry H. and Mary E. Christmas, and Richard Christmas.

Cross-int. 1st. Have you any distinct recollection of the re-delivery of the draft of Martin, Cobb & Co., in favor of yourself and W. P. Anderson, to said Richard Christmas? If yea, state when and where the same occurred, who delivered said draft, to whom it was delivered, and for what purpose.

Cross-int. 2nd. How do you know that your co-surety, W. P. Anderson, did not receive the money on the said drafts of Rich'd Christmas accepted by Martin, Cobb & Co.?

X-int. 3d. Do you in fact know anything, of your own knowledge, in regard to the re-delivery or returning of the said draft of Martin,

265 Cobb & Co. for $13,000, or thereabouts, to said Christmas? If yea, state who returned said draft, when and where the said return took place, whether same was by letter or in person, and what was the consideration of the said return, if any. If you did in fact return said draft to said Christmas, why did you not take up your receipt to him for said draft, the same marked No. 2 to answer of R. Christmas now shown you? Was or not said receipt, Exhibit No. 2, cancelled or intended to be cancelled?

X-int. 4th. In answer to your int. 4th in chief, you say you accepted the transfer and assignment of the Lyons notes, as made in said letters of Christmas. Do you or not know that said Christmas denies the alleged transfer and assignment? If yea, do you mean to testify that said letters do in fact contain an unconditional transfer to you of any particular note, or do you mean to say that, in your opinion, said letters contained an assignment of said note? Please quote the terms of said letters supposed by you to contain said alleged assignment, and then say whether or not the proposals contained in said letters in reference to said note were countermanded by Christmas before any final

266 action was taken on them by you, and did you or not obey said

countermand of said Christmas, and write a letter to him to that effect, marked Ex. No. 3 to ans. of said Christmas?

Cross-int. 5th. State whether or not said Richard Christmas, subsequent to the date of your said letter to him, (Exhibit 3 to answer,) informed you by letter of May 12, 1866, that he had transferred the Lyons notes to H. H. Christmas, Martin, Cobb & Co., and A. O. and J. S. Brannin. If yea, did you ever notify said R. Christmas, H H. Christmas, Martin, Cobb & Co., or A. O. and J. S. Brannin that you owned or had any claim to the said notes or either of them; or did you notify the said Lyons, the maker of said notes, not to pay said notes, or either of them, at any time before said Lyons paid and settled said notes to and with said assignees?

Cross-int. 6th. Look at the three Lyons notes, filed with your answers in chief, for the sum of $16,666 each, and state which one of the notes, if either, are claimed by you to have been assigned to you by said letters of said R. Christmas. Did you ever claim either of said notes of said Richard or either of said defendants? If yea, when, where, and how?

267 Cross-int. 7th. Was or not the said Richard Christmas believed by you to be wealthy and amply able to pay said Russell judgment from other means than the Lyons note at the time said draft of Martin, Cobb & Co. became due and payable? Were not Martin, Cobb & Co. amply able to pay said draft at maturity, and could you not have collected said money on said draft at maturity, on the failure of said Christmas to renew the same? If yea, why did you not do so?

X 8th. Do you know of any person or persons other than complainants who have an interest, legal or equitable, in the judgment sought to be enforced by complainants' bill? If yea, state who they are.

X 9th. Is Exhibit No. three to answer of Richard Christmas your letter to him? If yea, has or not said letter reference to the letters of said Richard Christmas to you heretofore described in your answers in chief?

X 10th. State what interest you have, if any, in the result of this suit, and whether or not complainants have sued you, or obtained any judgment on said writ of error bond vs. yourself and the estate of the said W. P. Anderson, and whether you or either of you are able to pay said debt if said judgment were obtained against you or either of you.

J. D. FREEMAN,
Sol. for Def'ts.

268 In the circuit court of the United States for the southern district of Mississippi.

JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS.

Deposition of William Yerger, taken on the part of complainants in the above-named cause, by consent of parties, and on the interrogatories and cross-interrogatories hereto annexed, before James D. Stewart, commissioner, &c., of the United States circuit court for the southern district of Mississippi, taken in the city of Jackson, Mississippi.

The said witness, being duly sworn, cautioned, and examined, deposeth and saith as follows:

Ans. to 1st int'y. I know the parties defendants to this suit, but do not know any of the complainants except T. H. Lindsey.

Answer to 2nd int'y. I know of the suit of Russell and others against

Richard Christmas, mentioned in complainants' bill, and I am one of the sureties on the writ of error bond, as stated therein. After the judgment was rendered in the circuit court of the United States, at Jackson, against Richard Christmas in that suit, he applied to me to become his security on the writ of error bond, and at the same time requested me to ask Warren P. Anderson to unite with me in executing the bond as one of the securities. Christmas stated at the time that his acquaint-
269 ance with Anderson was not such as to render it probable that Anderson would become his security on his personal application, but that he had no doubt Anderson would willingly do so if I would request it. Christmas stated at the same time that he was entirely solvent, and that I knew that fact, and that I could assure Anderson, if he would go upon the bond, he, Christmas, would at all times indemnify and protect him and this witness against any loss or damage by reason of becoming sureties on the writ of error bond. Acting on this request of Christmas, I asked Anderson to execute the bond with me as surety for Christmas, stating to him that I was authorised by Christmas to say that, if he did so, he should at all times be protected, and saved harmless from any loss in consequence of such suretyship. On this assurance Anderson did execute the bond, but expressly stipulated that Christmas should furnish indemnity to him in accordance with the assurance thus given.

Answer to 3d int'y. I have examined the paper marked No. 2 to the answer of Richard Christmas, and I recognise the same as being in my handwriting. When my answer was drawn and filed in this case,
270 the fact that this receipt had been given had escaped my memory. In looking at it my memory, in regard to some facts connected with it, has been refreshed. After the receipt was given, Christmas, for some purpose or other in his business transactions, desired to take up the letter of credit of Martin, Cobb & Co., and also the draft referred to in the receipt, and applied for that purpose to Anderson and myself, or to me—I think it was to me—stating that he had other means ample and sufficient out of which he could indemnify us. I cannot state the precise time when this occurred, but it was not long before or after the draft matured. I have a decided impression on my memory that he referred, as the means of such indemnity, to the notes he held against Lyons. This impression is strengthened by the fact stated in his letter to me of October 23d, 1865, filed as Exhibit No. 1 to my answer in this case, in which he says: "I have ever held the Lyons note sacred for the payment of this debt." On the application of said Christmas, the draft and letter of credit referred to in the receipt were returned to him. No money was ever paid on the draft or letter of
271 credit to Anderson or myself, and I presumed the draft was cancelled, and returned to Martin, Cobb & Co.; but the obligation of Christmas to indemnify Anderson and myself as his sureties against any loss continued. When my answer was filed in this case, the circumstances connected with the execution of the receipt, and the draft and letter of credit of Martin, Cobb & Co., and the surrender of them to Christmas, had escaped my recollection; but looking at the receipt has refreshed my memory, and enables me to recall some incidents that I had forgotten.

Answer to int. 4. I have examined the series of letters referred to in this question. They are marked No. 1 to No. 7, inclusive, and are filed with my answer. They were all written by Richard Christmas, and were all received by me. I accepted the transfer and assignment of the Lyons note, as made in said letters by Christmas, as a compliance with

the promise made by him to indemnify Anderson and myself as his sureties, and I acted on them as such. I informed Willie Lyons of the fact about the time I received the letter written in October, 1865, or
272 some short time thereafter, in the fall of 1865, and I informed him, after I heard that he had substituted new notes in lieu of the original, that, when judgment went against Christmas in the Supreme Court of the United States, I would look to those notes to protect Anderson and myself as the sureties of Christmas.

Ans. to 5th int'y. As above stated, I had a conference with Lyons in reference to the letters rec'd from Christmas, and the note referred to therein, and I distinctly informed him of my rights relative thereto, and also of Anderson's, to have ourselves indemnified, as the sureties of Christmas, out of those notes, and that I would, if necessary, take steps to prevent his paying the money either to Richard Christmas or his wife, or to his son, H. H. Christmas.

Answer 6th int'y. I consented to be governed by the instructions, or rather the wishes, of Richard Christmas (for they were not instructions, as he had no right to give them) in conducting the negotiations with Russell and Lyons in regard to the payment and compromise of the Russell debt, because Christmas was a personal friend, in whom
273 I then had confidence, and I was unwilling to do anything that might prejudice his negotiations for settlement or compromise with Russell. From the facts connected with the original judgment, as stated to me by Christmas, I thought it was a hard case that he should have the debt to pay. I knew that he, as well as everybody else in this section, had been broken up by the war, and I thought I would not be doing right if I gave any information or did any act that would prevent Christmas from making a favorable compromise. All I wanted, or had a right to ask of Christmas, was to protect Anderson and myself as his sureties, and it was a matter of indifference to me how or at what rate he compromised with Russell, so that he relieved Anderson and myself. And I had full confidence that he would never direct the Lyons note to any other purpose than our indemnity, and that he would always hold it, as he said he had done, "sacred" for that purpose. The protection and indemnity of the estate of Anderson was a matter of serious importance to me, because Anderson had become the surety of Christmas at my request, as above stated.

Answer to 7th int'y. I had in my possession the three notes of
274 Lyons, all dated November 30th, 1859, for the sum of $16,666 00 each, payable to Richard Christmas or bearer at one, two, and three years after 20th December, 1859, and all bearing 8 per cent. int. from that date till paid. These notes were received by me from Lyons since the commencement of this suit, on my application to him for the same. I also received from him, at the same time, a letter, purporting to be signed by A. O. and John S. Brannin, and Martin, Cobb & Co., dated Louisville, May 8th, 1866. The endorsements on the back of said notes, with the name of R. Christmas signed thereto, are in the handwriting of Richard Christmas. The memorandum of credit, endorsed on the first of said notes falling due, is in a handwriting which I do not recognise. A. Burwell's name, on the back of said note, is in his handwriting. The three notes above referred to and the letter were handed back by me to Willie Lyons a few days ago, when his deposition was taken in this case, and are filed with his deposition. I think it proper to state that the letter dated May 12, 1866, filed with my answer as an exhibit, and written at Louisville by Richard Christmas, conveys the first suggestion or information of any kind that Richard Christmas had transferred

275 said notes, or any part thereof, to his son, H. H. Christmas, or that said H. H. Christmas had or pretended to have any transfer, right, or claim of any kind to said notes, or any part thereof.

Answer to 8th int'y. Richard Christmas was very much involved in 1848 and 1849; he was insolvent; nothing could have been made out of him by execution.

Answer to 1st x-int'y. I have no distinct recollection of the time or place when the draft and letter of credit of Martin, Cobb & Co. were delivered to Richard Christmas. My impression is that it was in the fall of 1860 or the spring of 1861, but I cannot speak positively on that point. I cannot state positively whether they were delivered to Christmas by Anderson or myself, but I am of the impression it was done by me. I do not now recollect distinctly whether Anderson or myself kept the possession of said draft and letter of credit, but I think I did. Martin, Cobb & Co. never paid anything on them, and they were delivered to Christmas at his request. I cannot state the purpose for which they were delivered to Christmas, except as stated in my answer to the direct interrogatories for the purposes of Christmas, and to facilitate his business arrangements.

276 Answer to 2 x-int'y. I know that Anderson never received the money on the draft, because, after the maturity of the draft, I saw Anderson and Christmas frequently, and also Mr. Cobb, the managing partner of the firm of Martin, Cobb & Co., in New Orleans, and I never heard either of them intimate or suggest the fact that anything had been paid to Anderson on the draft. I also know it because the draft was returned to Christmas at his request, and I believe the draft was kept in my possession till it was delivered to Christmas.

Ans. to 3 x-int'y. I have answered this question as fully heretofore as I can now. I only speak from my memory. I have endeavored to recall the circumstances which caused the draft to be delivered up to Christmas, and they were, according to my recollection, as I have heretofore stated them. I believe that the draft was delivered by me to Christmas, whether in person or by letter I cannot now state. I kept regular letter-books, but they were burned in February, 1864, and I cannot refer to them to refresh my recollection. Why my receipt marked Exhibit No. 2 to answer of Christmas was not returned to me I cannot now state.

277 I suppose it was casually retained by said Christmas. I had forgotten its existence till it was filed with his answer, and, on seeing it, many circumstances were recalled to my memory connected with the transaction which had escaped it.

Ans. to 4th x-int'y. I am aware that Christmas denies now that his letters made an assignment to me of Lyons' note. I mean to testify that, in my opinion, those letters do make a transfer of a note of Lyons for $16,666 00, with many years' interest, to me, to indemnify me against loss as the surety of Christmas on the writ of error bond. Whether it does so or not, is a legal question to be decided by the court. I think Christmas referred to a particular note in his letter to me, and that it was one of the three above referred to, which he afterwards placed in the possession of his son, who received payment in part from Lyons and took new notes in renewal for the balance. I decline making any quotations from the letters of Christmas, to contain what I suppose to to be an assignment by Christmas to me, as the whole letters are on file, to be construed by the court. I do not propose in my answer to give any construction to Christmas' letters further than this: After they were received, I acknowledged the receipt of them

278 to Christmas, and requested him to send me the Lyons note. I in-

formed Lyons that I claimed the note referred to in the letter of Christmas, and would subject it to indemnify Anderson and myself, if necessary, against the Russell debt. I never recognised Christmas as having any right to divert the note from that purpose, and I felt that he wronged me in attempting to do so, by making the transfer to his son, of which I received the first notice or intimation in his letter of 12th May, 1866. I wrote the letter marked Exhibit 3 to the answer of Christmas, but I did not intend, nor did I, in that letter, abandon or give up my right to claim indemnity out of Lyons' note, and I informed Lyons repeatedly of my claim on the note. The letter written by me, being Exhibit No. 3 to answer of Richard Christmas, was written on the 20th March, 1866, and acknowledged three letters from him dated 14th, 17th, and 21st Feb'y, 1866. The letter of the 17th Feb'y referred to has been lost or mislaid, but its contents are in substance repeated in a letter dated 20th Feb'y, which is filed, marked Exhibit No. 3, with my answer. In the letter of 14th Feb'y he expressed himself as willing to make a liberal arrangement with Lyons. In the letter of the 20th
279 Feb'y he states that he wrote to me on the 17th Feb'y, and proposed that Lyons might take up the Russell judgment, and he would give him credit on his note, dollar for dollar. But in the letter of the 20th he states that, on mature reflection, he thinks he may be doing wrong, as he has "no knowledge that the Russell judgment had been confirmed, and it may be that he would get rid of the debt entirely." He therefore countermands the proposition to Lyons, but says: "I will hold this note, $16,666 00, and many years' interest, at 8 per cent., always subject to this debt, provided the judgment is confirmed, until which let the matter rest." In the letter of the 21st Feb'y he says that he had "received some information, which caused him to countermand the proposition for Lyons to take up his debt, or exchange dollar for his paper." He also says in the letter of 21st Feb'y, that I may rest assured he will protect me with Lyons' note of $16,666 60, which is now over $20,000 00; but he says this fact should not be known, to enable him to make a favorable arrangement. When my letter of 20th March, 1866, was written, the judgment in the Russell case had not been affirmed
280 in the Supreme Court, and when I said in that letter that "I would do nothing in the business with Lyons without his directions," I referred to the proposition he had made for Lyons to buy up the Russell judgment. But I had no idea of releasing my claim to indemnity by the note of Lyons. On the contrary, the very letters to which I was replying contained a pledge by Christmas to hold the note for that purpose. All I wanted was to be protected against the Russell judgment. I desired this much more on account of the estate of Anderson than on my own account, and I so wrote to Christmas. I was willing for him to settle the Russell judgment in his own way, provided he settled it so as to relieve Anderson's estate and myself, and I intended to let him have every opportunity to do so; but I never intended to part with my claim on the note of Lyons till we were relieved. I never doubted the good faith of Christmas, and fully believed he would always hold Lyons' note for our protection, as he promised to do, till his letter of 12th May, 1866, was received from Louisville.

Ans. to 5th x-int'y. Richard Christmas did inform me, in his letter of May 12th, 1866, that he had transferred a part of the Lyons note
281 to Martin, Cobb & Co., and a part to the Messrs. Brannin, and the balance to his son. I never gave any notice to Martin, Cobb & Co., or to the Messrs. Brannin, or to H. H. Christmas, of my claim to the note, but I repeatedly informed Lyons of it, and told him I would

assert it whenever the judgment against Christmas was affirmed in the Supreme Court. I also wrote to Richard Christmas, expressing dissatisfaction with his conduct, but as he, in his letter of 12th May, still promised to protect me, I did not choose to quarrel with him, nor get into litigation if it could be avoided, and I hoped he would keep his promise by settling with Russell. I knew my redress was in my own hands, by stopping the money in Lyons' hands, which I always intended to do, if necessary, and it was at my request and by my suggestion that this suit was brought against Lyons and the Christmas's.

Ans. to cross-int. 6. I cannot specify which of the three notes Christmas specially referred to in *in* his letters as held for my indemnity; it was one of the three. From the tenor of his letters, I was under the impression that he then held only one of the notes. I never claimed any particular note; all I claimed then or now is to be indemni-
282 fied by means of Lyons' note for $16,666 00, referred to by Christmas in his letters. As one of them was designed for my indemnity, and all three went into the hands of H. H. Christmas, I insist that I am entitled to one-third of the proceeds that has been or may be realized on the three, for that purpose.

Ans. to 7th x-int'y. I believe Richard Christmas when I became his security was wealthy, and I think he could have paid the Russell judgment up to the time the war begun, and for some time afterwards, by other means than the Lyons' note. I think Martin, Cobb & Co. could have paid the draft at maturity, and, I have no doubt, would have done so if it had been demanded; but the draft was given up, as before stated, to Richard Christmas at his own request. I have heretofore stated, as well as I can at this time, why the draft was not collected from Martin, Cobb & Co. I did not care to collect the money until I was made liable, and delivered the draft to Christmas, as before stated.

Ans. to 8th x-int'y. I do not know of any other person than complainants who have any interest of any kind in the judgment sought to be enforced.

Ans. to 9th x-int'y. Exhibit No. 3 to answer of Richard Christmas
283 is a letter written by me to him, and refers to his letters of the 14th, 17th, and 21st Feb'y, 1866, written to me, as before stated.

Ans. to 10th x-int'y. I am interested in this suit, being liable as the surety of Richard Christmas on the writ of error and supersedeas bond, as before stated. I have not, nor has the estate of Anderson, been sued on that bond, nor has any judgment been rendered on it against either of us. If judgment was obtained against me on it, I would not be able to pay it, nor could it be enforced by execution at law. I think a considerable part of it might be collected from the estate of Anderson. Mr. Lindsey was here in the spring for the purpose of suing Anderson's estate and myself on this bond, as I was informed. I informed him of the indemnity which Christmas had given us, and advised him that he had better proceed to subject that, which I told him I thought he could do. He then requested me to bring suit, stating that I should be well paid, in the event of success. Not wishing to bring the suit myself, I placed the case in the hands of Judge Harris.

And further this deponent saith not.

W. YERGER.

284 I, James D. Stewart, United States commissioner, &c., as aforesaid, do hereby certify that William Yerger, the witness who signed the above deposition, was by me first duly and legally sworn to speak the truth, the whole truth, and nothing but the truth in reply to

the interrogatories and cross-interrogatories annexed in the cause aforesaid, and that his deposition, in his own handwriting, was signed by him in my presence, in the city of Jackson, State of Mississippi, on the 2nd day of December, 1869.

JAMES D. STEWART,
U. S. Commissioner.

Commissioner's fee, $10 00.

Filed Dec. 4th, 1869.

G. T. SWANN, *Clerk.*

Opened by consent Dec. 4th, 1869.

W. & J. R. YERGER.
J. D. FREEMAN.

Deposition of John D. Freeman.

Interrogatories to be propounded to John D. Freeman in the case of John W. Russell et al. vs. Willie Lyons et al., in the circuit court of the United States for the southern district of Mississippi.

1. Are you the attorney for any of the defendants in the above cause; if yea, for what defendants?

285 2. Did you prepare the answers of Richard Christmas and H. H. Christmas to the original bill in the above cause; and, if so, was either of the defendants present, and which of them, at the time said answers were prepared?

3rd. At the time the answer of Richard Christmas was prepared, did you or not have in your possession the original letters of Richard Christmas, which are made Exhibits 1, 2, 3, 4, 5, 6, and 7 to the answer of William Yerger in said cause; and did you not place the same in the possession of said Richard Christmas for examination and perusal?

4th. Did you or not furnish Richard Christmas with copies of said letters, or abstracts of them, at the time or just before the time of filing his answer and taking his deposition in this cause, and with a view to the taking of said deposition and preparing his answer.

5th. When did you last see H. H. Christmas? Was his answer prepared in Jackson, Mississippi, and while Richard Christmas was here, and did you not prepare his answer and that of H. H. Christmas at the same time, or during the visit of Richard Christmas to Jackson, Missi.?

6. In whose handwriting are the answers of Richard and H. H. Christmas; and where was H. H. Christmas when his answer was

286 prepared; and where was Richard Christmas at that time?

7. Where does the witness James Y. Christmas reside, and where did he reside when the agreement to take his deposition was signed, and was it not stated by you at the time that said witness resided in North Carolina?

8. To whom did you forward or cause to be forwarded the commissions and interrogatories for taking the testimony of witnesses Douthit, Young, and J. Y. Christmas?

9. In his deposition, the said Richard Christmas, and in your affidavit on file in the above cause, the transmission of a certain receipt to you by mail is spoken of. State at what time and in what way you received notice of the transmission, giving the date of the notice, and, if by letter, append the same to your deposition.

10. Where did Richard Christmas reside in 1869, and where does he now reside?

11. State at time you became the counsel of Richard Christmas. If after the settlement with Wiley Lyons, by which he gave the notes in controversy in this suit, state whether said Richard Christmas, prior to the giving of said notes, corresponded with you by letter in re-
287 gard to the debt due from Lyons; and, if so, produce said letters, and append same to your answers.

12. Did you have correspondence by letter with said Richard Christmas respecting the Lyons debt prior to the filing of the bill in this case; if so, produce the letters from said Richard to you, and state whether or not Richard Christmas placed the Lyons notes executed to H. H. Christmas in your hands?

HARRIS AND WITHERS.

Answers of John D. Freeman to interrogatories propounded to him by Harris and Withers, attorneys for complainants, in the case of John W. Russell et als. vs. Willie Lyons et als., in the circuit court of the United States for the southern district of Mississippi.

Ans. to int. 1st. I am the attorney of the defendants H. H. Christmas, M. E. Christmas, and Richard Christmas.

Ans. to int. 2nd. The answer of Richard Christmas was prepared by me in his presence, and read by him before the same was attested by him and signed by me. H. H. Christmas was in San Francisco, California, and could not conveniently be present. I prepared an answer in part for him, and forwarded to him a copy of complainants' bill and exhibits, with request that he should examine said bill and
288 answer the same according to the facts; said answer was returned to me as the same now appears of record.

Ans. to int. 7th. I do not know where James Y. Christmas resides, except from information, and that information was that his usual place of abode is in the State of North Carolina, and I believe I so stated to counsel when the agreement to take his deposition was signed.

Ans. to int. 8th. The commission and interrogatories for Douthit were forwarded by the clerk of this court to the commissioner, as I believe; also to Young in the same way. There was no commission in the case of T. Y. Christmas. His deposition was taken by agreement of counsel, which I enclosed to Richard Christmas at Louisville, Ky., who was the agent of H. H. and M. E. Christmas in their absence.

Ans. to int. 10. Richard Christmas resided and resides at Louisville, Ky.

Ans. to int. 11. I became the counsel of Richard Christmas after the present bill was filed, and not before. I had no correspondence with Richard Christmas about said notes or debt due from Lyons prior to the giving of said note. I have no letters from him on that subject.

289 Interrogatories No. 3, 4, 5, 6, and 9 have reference to matters which occurred in the course of the performance of my professional duties as an attorney at law for defendants H. H., M. E., and R. Christmas, and they seek to draw from me testimony obtained by me in the confidential relation of attorney for said parties. I therefore refuse to answer the same, and claim the protection of this court.

JOHN D. FREEMAN.

Sworn to and subscribed before me this 28th Jan'y, 1870.

A. McGEHEE, *U. S. Comm'r.*

Counsel for the complainants object to the answers as not being full, and refers the question to the court, and ask that witness be compelled to answer the questions 3, 4, 5, 6, and 9, and that he be compelled to produce the letters *of written to him* by Richard Christmas, written to witness prior to the filing of the bill in this cause relating to the claims sued upon this cause.

HARRIS AND WITHERS.

Filed Jan'y 28th, 1870.

GEO. T. SWANN, *Clk.*

Amended answer of J. D. Freeman, filed by order of court.

JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS ET AL.

290 Ans. to int. 2nd. When answered said 2nd interrogatory formerly, the papers were in the possession of Judge Harris, and at his office, and not referred to by me. My recollection then was that, on the preparation of the answer of H. H. Christmas, I had left some blanks to be filled by him on further examination; but, upon reference to the answer itself and to his letter, I find that I prepared the answer as the same appears of record. I first prepared the answer of Richard Christmas, which, from the nature of the trust estate and his management of the same as trustee for his son, H. H. Christmas, until he arrived at his majority, and afterwards, by agreement, while he was in the confederate army, covered all the facts and questions of any moment embraced in the answer of said H. H. Christmas. The answer of Richard Christmas was sworn to on the 15th June, 1859, as the same purports. Respondent subsequently prepared the answer of H. H. Christmas, and enclosed the same, together with the said answer of Richard Christmas, to said H. H. Christmas, at San Francisco, California. Said papers were subsequently returned to me, accompanied by the letter of said H. H. Christmas, herewith filed, showing
291 that he read and examined all the papers, and attested the answer, as requested by me. Said letter is marked Exhibit No. 1 to this answer.

Ans. to int. 6. The answers of H. H. Christmas and Richard Christmas are partly in the handwriting of a youth by the name of Smythe, whom I employed to copy, and partly in my own handwriting.

Ans. to int. 9. I rec'd said notice by letter by mail. Said letter is herewith appended by order of court, and under protest that said letter is confidential communication from my clients to myself about his case in my hands as his attorney, and I hereby except to the ruling of the court requiring me to produce said letter, and object to the reading of the same as evidence in this cause.

Answer to 12th int. Prior to the filing of the bill in this case, the defendant H. H. Christmas had gone to the Pacific coast, and Mary E. Christmas was residing in Dresden. R. Christmas had written powers of attorney from each of them to attend to their business, the same on file in this cause. I therefore corresponded with said R. Christmas as the agent of these parties, whose attorney I was, and not other-
292 wise. I also took his deposition, the same now on file in this cause, as part of the evidence herein. I decline to produce the letters of R. Christmas, written to me as the agent of my clients.

Richard Christmas did not place the Lyons notes, referred to in this interrogatory, in my hands, nor did he ever claim them as his property, or have them in possession after they came to my hands.

Ans. to int. 4th. The letters referred to were in my possession at that time, and said R. Christmas had the opportunity to see the same, but they were not in his possession at the time his deposition was taken at Louisville, in the State of Kentucky.

JOHN D. FREEMAN.

Exhibit No. 1 to answer to interrogatory No. 2 of deposition of John D. Freeman.

SAN FRANCISCO, CAL., *July 1st*, 1869.

Gen'l J. D. FREEMAN.

DEAR SIR: Yours dated June 17th, enclosing answer to the Russell bill, was received to day. According to instructions I have read the papers. Finding correct, have signed and forwarded by express, hoping they may reach you safely, and trust ere long to hear of the de-
293 feat of the opponents. I am managing to make a living here. The times are extremely tight. I am well posted in this, the money matter, being employed in a large firm of money lenders, which keeps me quite busy, as I some days take my seat at eight in the morning and never rise until six in the evening. However, I am promised a much better place soon, less work and larger pay.

Again allow me to thank you for the interest you have taken in this matter; and, should you wish to communicate with me, a letter addressed to box 1658, care of Walter W. Blow, will reach me. Let me hear from you from time to time; and, with kindest regards to Mrs. Freeman and the rest of the family, I remain, yours, truly,

HARRY H. CHRISTMAS.

Letter filed by order of court with deposition of John D. Freeman.

MEMPHIS, *Oct. 4th*, 1869.

JOHN D. FREEMAN.

DEAR SIR: I am now on my return to Louisville, having accomplished all I could have expected, and even wished. I dug up
294 the receipt from my son for the Lyons notes, which found in an old letter, and had overlooked it often before, which receipt Mr. A. K. Young, of St. Louis, recognized as my son's handwriting, both as to the receipt and signature, and, to prove the same in his deposition, sent the same by mail to you on 27 Sept., he retaining copy, which you doubtless have received by Young. I will also prove the possession of the Lyons notes in Texas by my son in 1864, and his having spoken of sending the notes to Matamoras, Mexico, for safety, believing the war would soon terminate. By Douthit, who lived with me as manager many years before the war, I will prove the transfer of the three notes in August, 1862, he being present, a circumstance I had entirely forgotton since the assig'm't and the receipt to me. After the war was over he went to Louisville, and there met my son, who told him he had sent the Lyons notes to Matamoras, Mexico, for safety, from Texas, in 1864, and was fearful they were lost, having heard nothing from them or me up to that time, which was in 1865. Douthit accompanied my son after this his uncle's, B. D. Smith, in Tennessee; while there he spoke often and feelingly on the subject of these notes, stating it was about all he had left. His lands on Miss. he regarded as worth-

295 less. In fall, 1865, he went to Miss., and there met Douthit, who, with A. Burwell and C. A. Manlove, rented his plantation, or worked the same on joint account; while there he *hird* for the first time where I was, and wrote and stated he was on his plantation. The notes *the notes* of Lyons *was* still *still* theme of anxiety, and not until late in fall of 1865 did he hear that I had the Lyons notes; hence the proof is clear and conclusive as to the transfer in 1862; this and the corresponding testimony of Young, together with the dug-up receipts, all in handwriting, make a strong case. B. Douthit will be in Louisville on 15th inst., when I can take his deposition, if it can be done without order of court, about which I have written so often for information. You took order of court to take mine and Lyons'. The plaintiffs, it appears, are taking evidence without any order; hence my confusion. A. M. Young is at St. Louis. I saw Dr. Moses M. Pollen at St. Louis. He recollected distinctly the transfer of wife's land to R. A. Gentry; was present and advocated the sale; knows I agreed to give Mrs. Christmas land or negroes in Mississippi to the amount of her interest, and that he, Pollen, valued the negroes, and saw the deed of trust executed to B. D. Smith, trustee. It appears to me proof should be made,
296 through B. D. Smith, that I held possession of these negroes by agreem't, and was to pay hire for them, he having no land to put them on, and that I have never paid any hire to him. Douthit knows I had these negroes on the river; knows I never claimed or used the land as my own, but, on contrary, always spoke of it as Harry's, a fact known to the country. He also knows I did keep a strict account with my son in a book for that purpose, and the last time he saw it, in 1859, it was over one hundred thousand dollars. Douthit was present when I sold Lyons the land in Bolivar County; saw, after the sale, the Lyons three notes of $16,666; and saw the same notes transferred to H. H. Christmas in August, 1862, by me. I shall attend, immediately on my arrival, the taking of A. O. Brannin's deposition, and give my own, before which, however, I should be pleased to see Yerger's deposition, as I might be better prepared to rebut his proof by Douthit and myself. Let me hear from you immediately, and oblige, yours, &c.

R. CHRISTMAS.

Under head of general interrogatory I will be able to prove by Douthit many facts that I think would important. He was in Texas at my house, in 1863, but did not see Harry; returned to Miss.
297 River in 1865, and took possession of my son's land, first going to Kentucky, where he met my son, and was with him for months; and went with him to Tennessee, where B. D. Smith lived. This trust to B. D. Smith you do not appear to rely on. I thought it the best if I am responsible in the place of Smith. Is the decision sent you by Bodly and Simral important? Should you not have an affidavit prepared to continue the case, should you not be ready? I will have all my proof in if you will send the depositions in time.

And the following transcript of mortgage was also filed as proof by complainants herein, to wit:

Richard Christmas and wife to Martin, Cobb & Co.—mortgage.

This indenture, made and entered into on this first day of September, A. D, 1858, by and between Richard Christmas, and Mary E. Christmas, his wife, of the county of Issaquena, State of Mississippi, of the first

part, and Thomas J. Martin, Daniel Cobb, John D. Cobb, and John Dolhonde, merchants, and partners under the firm and style of Martin, Cobb & Co., of the city of New Orleans, State of Louisiana, of
298 the second part, witnesseth:

The said Richard Christmas has drawn the following bills of exchange directed to the said Martin, Cobb & Co., all dated at Tallula, Miss., to wit, one bill for twenty-five hundred dollars, dated 10th August, 1858, one other bill for five thousand dollars, dated 5th August, 1858, and one for five thousand dollars, dated 20th August, 1858; which three bills are due and payable sixteen months after date; also one other bill for five thousand dollars, dated 20th August, 1858, and one other bill for twenty-five hundred dollars, dated 5th August, 1858, which two bills are due and payable fourteen months after their date; also two other bills, one for five thousand dollars, dated 20th August, 1858, and the other for twenty-five hundred dollars, dated 5th August, 1858, which two last-named bills are due and payable fifteen months after date; also three other bills, one for twenty-five hundred dollars, dated 10th August, 1858, one for five thousand dollars, dated 20th August, 1858, and one for five thousand dollars, dated 5th August, 1858, which three last bills are due and payable seventeen months after date; and two other bills, each for five thousand dollars, one dated 5th August, and the other 20th August, 1858, and due and payable eighteen
299 months after date; all of which bills, amounting in the aggregate to the sum of fifty thousand dollars, are payable to said Richard Christmas, and by him endorsed, and to be accepted by the *drawers* for the benefit and accommodation of said drawer:

And whereas, also, the said Martin, Cobb & Co. have contracted and agreed with the said Richard Christmas to furnish to him, for the use of his plantations and family, such supplies of merchandise as he may require, and such sums of money as he may need to carry on said plantations, and for the use and support thereof and of his family, not exceeding in the aggregate the sum of fifteen thousand dollars in and during one year:

And whereas by the acceptance of the bills of exchange aforesaid for *the acceptance of the bills of exchange aforesaid for* the use and benefit of the said Christmas, the said Christmas has become indebted to the said Martin, Cobb & Co. in the sum of fifty thousand dollars aforesaid, besides the commissions usual and customary among merchants for the acceptance of bills, at the rate of two and a half per cent. on the amount thereof:

And whereas the said parties of the first part desire to secure the said Martin, Cobb & Co., as well the amount of said bills of exchange and commissions due for the acceptance thereof, as the amount
300 which may be due them for supplies of merchandise and for money advanced as above provided for:

Now, this indenture witnesseth that, as well for and in consideration of the premises as of the further sum of ten dollars to them in hand paid at and before the sealing and delivery hereof, (the receipt of which from the said parties of the second part is hereby acknowledged,) they, the said parties of the first part, have bargained, sold, aliened, confirmed, and conveyed, and by these presents do bargain, sell, alien, confirm, and convey, to the said parties of the second part, their heirs, and assigns, forever, the following-described tracts and parcels of land, lying and being in the county of Bolivar, State of Mississippi, to wit: Lots one, two, three, and four, (1, 2, 3, and 4,) in section six, (6;) lots six, seven, and eight, (6, 7, & 8,) in section five; all of fractional section nineteen,

and the north half of section twenty, all in township twenty, range nine west, containing in all twelve hundred and eighty acres, more or less, together with all the rights, privileges, and appurtenances thereto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the right, title, and estate
301 of them, the said parties of the first part, of, in, and to the same; and for the same consideration the said parties of the first part have bargained, sold, and conveyed, and do by these presents bargain, sell, and convey, unto the said parties of the second part, their heirs, executors, administrators, and assigns, the following-named negro slaves, to wit: Penny, about 30 years old; Roely, about 21, and her three children; Milton, about 21; Nelson, about 20; Tom Young, about 20; Dennis, about 16; Letty, about 22; Lucy, about 23; Martha, about 20; Sarah, about 19; Lizzy, about 25, and her three children; Caty, about 22, and her two children; Matty, about 20, and her two children; Mary Nicholson, about 25, and her two children; Heywood, about 25; Mose, about 30; Wesley, about 23; Tyler, about 24; Girl, about 20; Charlotte, about 22, and her child; Mary, about 40, and her child; George, about 24; Silvy, about 15; Lem, about 10; Jim, about 12; Jane, about 30, and her three children; Adam, Lydia, Armistead, Rachael, Cud, Lewis, Catherine, Pomp, Betsy, Toner, Judy, Vick, Billy, C. Mary, George, Sophy, Mingo, Dorcas, Kate, Dolly, Elizabeth, Robert, Caroline, Len, Andrew, Hester, Jessie, Viney, Niel, Emily, Warren, Paul, Lang, Dow, Violet, Flora, Edmund, Merry, Charles, Clarissa, Margaret,
302 Charles, Mahala, Thad, Heyer, Tom, Celey, Stump, B. Caroline, Reves, B. Maria, Simon, Stephen, Charity, Will, Maria, Puss, Ann Moore, Sam, Wilson, Julia, Amy, Amos, Addison, Jacob, Ann, Agnes, Hiram, Mary, Aggis, Leavy, Kitty, Nelly, Hannah, Mary, Wilburn, Susan, Emily, Lucey, Granville, Dick, Billy, Jackson, John, and Elisa, together with the future increase of the females, if any, and all the children of said females, if any, whether especially named or not, and forty head of mules: To have and to hold the said tracts and parcels of land, with the appurtenances, and the said negro slaves, with their increase, to the said parties of the second part, their heirs and assigns, forever, to their only use and benefit. And the said parties of the second part, for themselves, their heirs, executors, and administrators, covenant and agree to and with the said parties of the second part, their heirs and assigns, to warrant, and by these presents forever defend, unto the said parties of the second part, their heirs and assigns, the said granted lands and premises, and the said negro slaves, and their increase, against all persons lawfully claiming or to claim the same, upon condition, nevertheless, and it is the express condition of this indenture, that if
303 the said parties of the first part shall well and truly pay, or cause to be paid, unto the said parties of the second part, or their assigns, the said several sums of money above recited and set forth, with all lawful interest that may accrue thereon, and all commissions that may be due, or that may hereafter accrue thereon, and shall well and truly pay all sums of money that may be due to the said parties of the second part for supplies and advances made as before provided, and also all taxes and assessments on the said property, then, as well this present indenture and the estate hereby granted as the several bills of exchange shall cease and determine, and become null and void, anything hereinbefore contained to the contrary notwithstanding.

In testimony whereof the said parties have hereunto set their hands and seals the day and year first above written.

R. CHRISTMAS. [SEAL.]
MARY E. CHRISTMAS. [SEAL.]

THE STATE OF MISSISSIPPI, *Issaquena County:*

Before me, Thomas W. Hays, judge of the probate court in and for said county, personally appeared Richard Christmas, and Mary E.
304 Christmas, his wife, parties to above *above* indenture, who severally acknowledged that they signed, sealed, and delivered the same on the day of its date, and for the purposes therein expressed; and the said Mary E., being by me examined privately, separate, and apart from her said husband, acknowledged that she signed, sealed, and delivered, as her voluntary act and deed, freely, and without any fear, threat, or compulsion of her said husband.

Witnes my hand and seal this 11th day of Sept'r, A. D. 1858.

[SEAL.] THO'S W. HAYS, *Judge, &c.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, Ike S. Robinson, clerk of the probate court in and for said county, do hereby certify that the foregoing mortgage was filed in my office for record September 27th, 1858, and that the same has been recorded in Mortgage Book "A," pages 14, 15, 16, and 17.

Given under my hand and the seal of said court, at office, this 27th day of September, A. D. 1858.

[L. S.] IKE S. ROBINSON, *Clerk,*
By W. W. ROBINSON, *D. C.*

305 *Marginal notes.*

By virtue of a certain power of att'y to me, recorded in Deed book H, page 243, I hereby enter satisfaction of this mortgage Jan. 4th, 1861.

MARTIN, COBB & CO.,
By IKE S. ROBINSON,
Att'y in fact.

Cancelled, and satisfaction is hereby entered in full by virtue of a power of att'y directed to the undersigned, recorded in Deed Book "L," page 391, the 19th April, 1869.

W. E. MONTGOMERY,
Att'y in fact.

STATE OF MISSISSIPPI, *Bolivar County:*

I, H. T. Florey, clerk of the probate in and said county, do hereby certify that the foregoing deed, together with the certificates and marginal notes thereunto appended, is a true and correct transcript of the original as they appear of record in my office.

Witness my hand and official seal this 19th day of January, A. D. 1870.

[L. S.] H. T. FLOREY, *Clk,*
W. V. ONSLOW, *D. C.*

Filed Feb. 4th, 1870, by compl'ts.

G. T. SWANN, *Clk.*

	Defendants' names.	Amount of judgment.	Date of rendition.	County in which rendered.	Date of enrollment.	Plaintiffs' names.
No. 1.	Richard Christmas, Thomas H. Christmas, and Henry Christmas	$14, 791 08	June 6th, 1842	Circuit court of the United States of America, southern dist. of Missi.	June 26th, 1845	Hobson, Nicholas.
No. 2	Richard Christmas	$6, 166 87	June 7th, 1842	Circuit court of the United States of America, southern dist. of Missi.	June 26th, 1845	Watson, Matthew.
No. 3	Christmas, Richard	$1, 453 00 ; $20 16 costs	December 6th, 1841	United States of America, circuit court of southern dist. of Miss.	June 26th, 1845	Hadley, John,
No. 4	Christmas, Richard ; Christmas, Thomas H.; Christmas, Henry; and Benjamin S. Tappan.	$7, 753 04 & costs, $36 45	November term, 1841, December 8th, 1841.	United States circuit court, southern district of Missi.	June 26th, 1845	Nichol, W'm,
No. 5	Christmas, Richard ; Christmas, Thomas H.; Christmas, Henry; and B. S. Tappan.	$3, 076 43 ; $59 20 costs	8th December, 1841	United States circuit court for southern district of Missi,	June 26th, 1845	Nichol, W'm.
No. 6	Christmas, Richard, and others.	$8, 788 92 ctf., with interest from date, and costs.	9th of May, 1845	United States circuit court, southern district of Mississippi, at Jackson.	26th Sept,, 1848	Rising, David B.
No. 7	Christmas, Richard; Henry Christmas.	$4, 030 75,	12th May, 1846	Issaquena	22d May, 1846	W. F, Richie.
No. 8	Christmas, Richard	$748 88	4th October, 1847	Issaquena	28th December, 1847.	Vanlier and Baxter,
No. 9	Christmas, Richard ; Christmas, Tho's H.; Christmas, Henry; and Tappan, Benj. S.	$7, 753 04, with interest and costs,	8th Dec'r, 1841	Hinds, U. S. C. court, S. district.	June 23d, 1851	Nichol, William,
No. 10	Christmas, Richard	Judgment for def't, and his costs, $9 70.	11th May, 1852,	Issaquena	12th May, 1852	Andrew Evans,

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, H. P. Toy, clerk of the circuit court in and for said county and State, do hereby that the foregoing is a true and correct transcript from the caption and entries on the judgment roll of said county as the same appear of record in my office.

Witness my hand and seal of said court, at my office, in said county, this January 4th, 1870.

[L. S.]

H. P. TOY, *Clerk*,
By J. E. ELGIN, *D. Clerk*,

Filed Feb. 4th, 1870, by compl'ts.

G. T. SWANN, *Clk*.

	Parties' names.	Process.	Total am't judg't, & when rendered.	Where forfeited.	Sheriff's return.
No. 11	William F. Richie vs. Richard Christmas, Henry Christmas, secr.	Fi. fa...	$4,030 75; 18th May, 1846.....	Issaquena County, Miss.	No property found. MAYFIELD, *Sh'ff.*
No. 12	Anthony W. Vanlier and R. Baxter vs. Richard Christmas.	Fi. fa...	$748 88; 4th October, 1847.....	Issaquena.....	Received February 2nd, 1848. GEO. P. JOHNSTON, *Sh'ff Issaquena Co.* No property found out of which I can make this execution or any part thereof, this 18th day of April, A. D. 1848. GEO. G. JOHNSTON, *Sheriff I. C.*

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, Henry P. Toy, clerk of the circuit court in and for the said county and State, do certify that the foregoing is a true and correct extract from the execution docket of said county, as the same appears of record in my office.

Witness my hand and the seal of said court, at my office in said county, this the 4th day of January, A. D. 1870.

[L. S.]

H. P. TOY, *Clerk,*
By J. E. ELGIN, *Dept. Clerk.*

Filed Feb. 4th, 1870, by compl'ts.

GEO T. SWANN, *Clerk.*

[FFITH, *Marshal, &c.*

RIFFITH,
the So. Dist. of Miss.,
FIELD,
Deputy Marshal.

aforesaid, to wit, on the
se, &c., plaintiff, by (C.
laration herein against
words and figures, to

trict of Mississippi, set:
of Kentucky, plaintiff,
eit of Jacob Swigert,
Thomas N. Lindsey, in
aid Lindsey, as admin-
s of the State of Ken-
of the State of Missis-
fendant, &c., of a plea
id, the sum of $5,634
he 1st day of March,
f the said 1st day of
r costs, which the de-
aid, and from him un-

ovember, 1857, in the
t, held in the city of
ucky aforesaid, on the
t of said court, then
ainst said defendant,
he plaintiff recovered
n of $5,634 13 cents,
st day of March, 1841,
pended; which costs

e 19th June, 1858, re-
rt, to be entered as a
judgment defendant
eals for said State of
here was filed in the
rt of appeals afore-
rson circuit court, of
record and proceed-
court more fully ap-
l effect, not reversed,
iff has not obtained
gment, recovered as

	Defendants' names.	Amount of judgment.	Date of rendition.	County in which rendered.	Date of enrollment.	Plaintiffs' names.
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No. 2	Richard Christmas	$6, 166 87	June 7th, 1842	Circuit court of the United States of America, southern dist. of Missi.	June 26th, 1845	Watson, Matthew.
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No. 9	Christmas, Richard ; Christmas, Tho's H.; Christmas, Henry; and Tappan, Benj. S.	$7, 753 04, with interest and costs,	8th Dec'r, 1841	Hinds, U. S. C. court, S. district.	June 23d, 1851	Nichol, William.
No. 10	Christmas, Richard	Judgment for def't, and his costs, $9 70.	11th May, 1852	Issaquena	12th May, 1852	Andrew Evans.

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, H. P. Toy, clerk of the circuit court in and for said county and State, do hereby that the foregoing is a true and correct transcript from the caption and entries on the judgment roll of said county as the same appear of record in my office.

Witness my hand and seal of said court, at my office, in said county, this January 4th, 1870.

[L. S.]

H. P. TOY, *Clerk*,
By J. E. ELGIN, *D. Clerk*,

Filed Feb. 4th, 1870, by compl'ts.

G. T. SWANN, *Cl'k*.

	Parties' names.	Process.	Total am't judg't, & when rendered.	Where forfeited.	Sheriff's return.
No. 11	William F. Richie vs. Richard Christmas, Henry Christmas, secr.	Fi. fa...	$4,030 75; 18th May, 1846.....	Issaquena County, Miss.	No property found. MAYFIELD, *Sh'ff.*
No. 12	Anthony W. Vanlier and R. Baxter vs. Richard Christmas.	Fi. fa...	$748 88; 4th October, 1847.....	Issaquena.....	Received February 2nd, 1848. GEO. P. JOHNSTON, *Sh'ff Issaquena Co.* No property found out of which I can make this execution or any part thereof, this 18th day of April, A. D. 1848. GEO. G. JOHNSTON, *Sheriff I. C.*

THE STATE OF MISSISSIPPI, *Issaquena County:*

I, Henry P. Toy, clerk of the circuit court in and for the said county and State, do certify that the foregoing is a true and correct extract from the execution docket of said county, as the same appears of record in my office.

Witness my hand and the seal of said court, at my office in said county, this the 4th day of January, A. D. 1870.

[L. s.]

H. P. TOY, *Clerk,*
By J. E. ELGIN, *Dept. Clerk.*

Filed Feb. 4th, 1870, by compl'ts.

GEO T. SWANN, *Clerk.*

308 And on the final hearing of this cause the following transcript of record from the Supreme Court of the United States was introduced and read to the court as evidence by and on behalf of the complainants herein, to wit:

Supreme Court of the United States.

RICHARD CHRISTMAS, PLAINTIFF IN ERROR,
vs.
JOHN W. RUSSELL, USE, &C. } No. 239.

In error to the circuit court of the United States for the southern district of Mississippi.

JOHN W. RUSSELL, USE, &C.,
vs.
RICHARD CHRISTMAS.

Pleas before the Honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States in and for ninth circuit and southern district of Mississippi, held at the city of Jackson, at the May term in the year of our Lord one thousand eight hundred and sixty.

Be it remembered that heretofore, to wit, on the fourth day of June, A. D. 1869, the following writ of summons ad respondendum issued out of the clerk's office of the court aforesaid, in the words and figures to wit:

309 *Summons.*

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon Richard Christmas, a citizen of the State of Mississippi, that he be and appear at the circuit court of the United States to be held at the city of Jackson, in and for the southern district of Mississippi, on the first Monday of November next, to answer to John W. Russell, who sues for his own and the use of Jacob Swigert, Phillip Swigert, Edward H. Watson, and Thomas H. Lindsey, in his own right, and for the use of said Lindsey as administrator of Churchill Samuel, deceased, all citizens of the State of Kentucky, of a plea that he render unto said plaintiff, for the use aforesaid, the sum of $5,634 13, with 6 per cent. interest thereon from the 1st day of March, 1841, which he owes to and unjustly detains from him, to his damage twenty thousand dollars; and that he do file his plea or defence with the clerk of said court on or before the meeting of the same,
310 or judgment will be given against him by default; and have then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the 4th day of June, A. D. 1859, and in the 83rd year of the independence of the United States of America.

[L. S.] W. H. BROWN, *Clerk.*

Marshal's return.

Received June 4th, 1859.

R. GRIFFITH, *Marshal, &c.*

Executed August 15th, 1859.

RICHARD GRIFFITH,
Marshal of the So. Dist. of Miss.,
By JA'S L. MAYFIELD,
Deputy Marshal.

And on the same day of suing out the writ aforesaid, to wit, on the 4th day of June, A. D. 1859, John W. Russell, use, &c., plaintiff, by (C. L. and R. S. Buck) his attorneys, filed their declaration herein against Richard Christmas, defendant, in the following words and figures, to wit:

Declaration.

UNITED STATES OF AMERICA,
In the U. S. Circuit Court for the Southern District of Mississippi, sct:

John W. Russell, a citizen of the State of Kentucky, plaintiff,
311 who sues for his own and the use and benefit of Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas N. Lindsey, in his own right, and for the use and benefit of the said Lindsey, as administrator of Churchill Samuel, deceased, all citizens of the State of Kentucky, complains of Richard Christmas, a citizen of the State of Mississippi, and of the circuit and district aforesaid, defendant, &c., of a plea that he render to the plaintiff, for the use aforesaid, the sum of $5,634 13 cents, with 6 per cent. interest thereon from the 1st day of March, 1841, until paid, subject to a credit of $200 as of the said 1st day of March, 1841; and also the further sum of $200 for costs, which the defendant owes to the plaintiff for the use aforesaid, and from him unjustly detains:

For that whereas heretofore, viz, on the 11th November, 1857, in the State of Kentucky, in the Jefferson circuit court, held in the city of Louisville, county of Jefferson, and State of Kentucky aforesaid, on the said 11th day of November, 1857, by the judgment of said court, then and there rendered on the petition of plaintiff against said defendant, to answer which he had been duly summoned, he, the plaintiff, recovered against the said defendant the aforesaid sum of $5,634 13 cents,
312 with 6 per cent. interest thereon from the 1st day of March, 1841, until paid, and also his costs in said suit expended; which costs are, as aforesaid, the sum of $200.

But the said plaintiff subsequently, viz, on the 19th June, 1858, remitted to defendant $200 of the aforesaid judgment, to be entered as a credit as of the 1st March, 1841, from which said judgment defendant afterwards took his appeals to the court of appeals for said State of Kentucky; and on the 31st day of March, 1859, there was filed in the said Jefferson circuit court the mandate of the court of appeals aforesaid, affirming the judgment aforesaid of the Jefferson circuit court, of all which the defendant was convicted, as by the record and proceedings of said suit remaining in said Jefferson circuit court more fully appears, which said judgment remains in full force and effect, not reversed, satisfied, or otherwise vacated; and the said plaintiff has not obtained any execution or satisfaction of or upon said judgment, recovered as

aforesaid, whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of $5,634 13 cents above demanded, with 6 per cent. interest thereon from
313 the 1st day of March, 1841, aforesaid, until paid, subject to the credit of $200, 1st March, 1841, as aforesaid, and the said sum of $200 adjudged the plaintiff for his costs as aforesaid.

Yet the said defendant, although often requested so to do, hath not as yet paid the said sums of money above demanded, or any part thereof, to the said plaintiff, or to the plaintiff for the use aforesaid, but to do the same hath hitherto wholly refused, and still refuses, to the damage of the plaintiff of $20,000; and therefore he sues, &c.

C. L. AND R. S. BUCK,
MARSHALL & MILLER,
For Plaintiffs.

And on the 8th day of November, A. D. 1859, the following pleas were filed in this cause, to wit:

UNITED STATES OF AMERICA, *State of Mississippi:*

In the circuit court of the United States for the southern district of Mississippi, to November term, 1859.

RICHARD CHRISTMAS
vs.
JOHN W. RUSSELL.

1st. And the said defendant, by attorney, comes and defends the wrong and injury, when, &c., and for plea says the plaintiff his action aforesaid ought not to have and maintain, because, he says, there
314 is no such record as in said decla[r]ation the plaintiff hath above set forth, and this he prays the court to inquire; and in actio non, &c.

A. BURWELL,
For Defendant.

2. And for further plea, by leave of the court first had, defendant says actio non, &c., because he says that the cause of action set forth in the supposed record in the said declaration mentioned was barred by the act of limitations of the State of Mississippi at the time the said plaintiff instituted and commenced the suit thereon in said pretended record set forth; and the defendant avers that at the time of the commencement of the said action of the said plaintiff, in the State of Kentucky, which is without the State of Mississippi, and from thence to the present time, and at the time the cause of action accrued to the said plaintiff, to wit, on the 1st day of March, A. D. 1841, the said defendant was a resident of the State of Mississippi, and during all the time, from the said 1st of March, 1841, to the present time, was a domiciled citizen of said State, and had a mansion-house therein; and defendant avers that, on the 5th day of September, A. D. 1853, the said cause of action was barred, because he says that more than six years had elapsed from the accruing thereof; and this he is ready to
315 verify. Wherefore he prays judgment, and in actio non, &c.

A. BURWELL,
For Defendant.

3. And for a further plea, said defendant by leave, &c., says the plaintiff his action aforesaid ought not to have and maintain, because he says, heretofore and before the institution of the suit, to wit, on the 1st day of May, A. D. 1859, at, to wit, the district aforesaid, he, the said defendant, well and truly paid to the said plaintiff the debt in the said declaration demanded, and all costs and interests thereon; and this he is ready to verify. Wherefore he prays judgment, &c.; actio non, &c.

A. BURWELL,
For Defendant.

4. And for a further plea in this behalf, by leave, &c., said defendant says actio non, because he says that the judgment in said declaration mentioned and set forth was obtained and procured by the said plaintiff by fraud of the said plaintiff; and this the said defendant is ready to verify. Wherefore he prays judgment, si actio non, &c.

A. BURWELL,
Defendant's Attorney.

5. And for a further plea said defendant, by leave, &c., says actio non, &c., because he says that, at the time of the institution of the said suit in the plaintiff's declaration mentioned, in the circuit court
316 of Jefferson County, in the State of Kentucky, a place without the State of Mississippi, to wit, on the 5th day of September A. D. 1853, the said defendant was a resident of the State of Mississippi, domiciled therein, and the said defendant had been a resident of said last State, from the execution of the promissory note in said suit described as the cause of action therein, from the date thereof, and at the date of the same, until the said 5th day of September, A. D. 1853, a period of more than six years, and the said defendant avers that he, the said plaintiff, well knew the said residence of the said defendant, and did not institute suit on the said supposed cause of action, within six years from the accruing thereof; and this said defendant is ready to verify. Wherefore he prays judgment, si, &c.

A. BURWELL,
Defendant's Attorney.

6. And for a further plea said defendant says actio non, &c., because he says at the institution of the said suit in the State of Kentucky, and at the date of the rendition of the said supposed judgment, the said defendant was a resident of the State of Mississippi, to wit, in the district aforesaid, and defendant avers that such residence of the said defendant was well known to the said plaintiff, and defendant avers that
317 the said supposed cause of action in the said supposed record mentioned had accrued to the plaintiff, if at all, more than six years before the institution of the said suit in the circuit court of Jefferson County, in the State of Kentucky, a place without the State of Mississippi, and said suit was instituted to evade the laws of the State of Mississippi, and in fraud of said laws; and this defendant is ready to verify. Wherefore he prays judgment, si, &c.

A. BURWELL,
Defendant's Attorney.

And on the 10th November, A. D. 1859, the following replication to 3rd plea, and demurrer to 2d, 4th, 5th, and 6th pleas, was filed in this cause, to wit:

Replication and demurrer to pleas.

United States circuit court, November term, 1859.

JOHN W. RUSSELL
vs.
RICHARD CHRISTMAS. } 122.

And the said plaintiff for replication to the third plea, by the said defendant above pleaded, says precludi non, because he says the said defendant did not pay the said debt and all costs in the said declaration mentioned as said defendant in his said third plea hath alleged; and this he, said plaintiff, prays may be inquired of by the country.

MARSHALL AND MILLER, and
318 C. L. AND R. S. BUCK,
For Plaintiff.

And said plaintiff as to the said second, fourth, fifth, and sixth pleas of the said defendant by him above pleaded saith the same, and the matters and things therein contained, in the manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, said plaintiff, from having or maintaining his aforesaid action thereof against him, said defendant; and that he, said plaintiff, is not bound by the law of the land to answer the same; and this he, said plaintiff, is ready to verify. Wherefore he prays judgment, &c.

MARSHALL AND MILLER, and
C. L. AND R. S. BUCK,
For Plaintiff.

And defendants comes and joins issue, &c., and says the pleas above pleaded are sufficient in law to bar and preclude the plaintiff; and this he prays the court to inquire, &c.

A. BURWELL.

And on the 12th day of November, A. D. 1859, the following order was entered upon the minutes of this court, to wit:

JOHN W. RUSSELL, USE, &C.,
vs.
RICHARD CHRISTMAS. } 122.

Plaintiff's demurrer to the 2nd, 4th, 5th, and 6th pleas argued and submitted.

319 And on the 15th day of November, A. D. 1859, the following order was entered upon the minutes of this court, to wit:

JOHN W. RUSSELL, USE, &C.,
vs.
RICHARD CHRISTMAS. } 122.

Plaintiff's demurrer to defendant's 2nd, 4th, 5th, and 6th pleas being argued, and mature deliberation being thereupon had—

It is ordered by the court that the demurrer be sustained.

And afterwards, to wit, at the said May term of the court aforesaid,

to wit, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty, until which time this cause was legally continued, came the parties aforesaid by their respective attorneys, and the said plaintiff, by *their* attorneys aforesaid, bring into court the record of the recovery aforesaid by him in pleading above alleged; and thereupon all and singular the premises as to the said plea of the said defendant that there is not any such record of the recovery aforesaid being seen, and by the court now more fully understood, and mature deliberation being thereon had, for that it appears to the court now here that there is such record of recovery as aforesaid as the said plaintiff by his said replication to the plea above hath
320 alleged; and as to the issues aforesaid above joined to be tried by the country, a jury being called, came, to wit., &c., J. L. Morris, James McRae, W. D. King, E. H. Houston, W. F. Gartley, J. H. Burrus, E. Jones, N. Morrison, M. C. Cheatham, C. Tilly, W. H. Simmons, and J. P. O'Reilly, who being impannelled, tried, and sworn the truth to speak concerning the matters within contained.

Bill of exceptions.

J. W. RUSSELL *vs.* R. CHRISTMAS. } May term, 1860.

Be it remembered that this case came on to be tried before the Hon. S. J. Gholson, judge, &c., and a jury.

And the plaintiff offered to read in support of the action the transcript of the court of Jefferson circuit court, which, with the certificates, is in the words and figures following, to wit:

Transcript from Jefferson County circuit court, Kentucky.

STATE OF KENTUCKY:

Pleas before the Hon. P. B. Muir, sole judge of the Jefferson circuit court, held at the court-house, in the city of Louisville, on the 31st day of March, 1859.

321 JOHN W. RUSSELL, PLAINTIFF, *against* W. A. WILSON, R. (ALIAS) RICHARD CHRISTMAS, and H. and T. H. Christmas, defendants. } On petition.

Be it remembered that heretore, to wit, on the 5th day of September, 1853, came the plaintiff by his attorney, and filed his petition herein, which is as follows, to wit:

State of Kentucky, Jefferson circuit court, sct.

JOHN W. RUSSELL, PLAINTIFF, *against* W. A. WILSON, R. (ALIAS) RICHARD CHRISTMAS, and H. and T. H. Christmas, defendants. } Petition ordinary.

The plaintiff, John W. Russell, says that the defendants, on the 10th day of March, 1840, executed their promissory note to Churchill Samuel,

or order, for six thousand four hundred and twenty $\frac{42}{100}$ dollars, payable on the first day of March thereafter; which note was transferred and assigned by Samuel to plaintiff by written indorsement thereon. No part of said note has been paid, but it is yet due and owing plaintiff. He says said note is now in the hands of N. D. Coleman, esq., of the city of Vicksburg, and will be procured and filed in due time. He prays judgment for the amount of said debt, and other proper relief.

JOHN W. RUSSELL,
By BARRETT AND WOOD,
Attorneys.

322 STATE OF KENTUCKY, *Jefferson County, set*, set:

John W. Russell says the statements of the foregoing petition are true.

JOHN W. RUSSELL.

Subscribed and sworn to by John W. Russell, before the undersigned, this 5th day of September, 1853.

W'M T. BARRETT, *N. P. J. C.*

Note.

$6,420\frac{42}{100}$. VICKSBURG, *March* 10, 1840.

On the first day of March next we jointly and severally promise to pay Churchill Samuel, or order, six thousand four hundred and twenty $\frac{42}{100}$ dollars, at the Merchants' Bank, in the city of New Orleans, without defalcation, for value received.

W. A. WILSON.
R. CHRISTMAS.
H. AND T. H. CHRISTMAS.

(Indorsed:)
Churchill Samuel.
John W. Russell.

Ne varietur, in conformity with an act of mortgage passed before me this day.
New Orleans, March 20, 1840.

W. CHRISTY, *Notary Public.*

Whereupon the following summons issued, to wit:

The Commonwealth of Kentucky to the sheriff of Jefferson County, greeting:

323 You are commanded to summon W. A. Wilson, R., alias Richard, Christmas, and H. and T. H. Christmas, to answer, on the first day of next November term of Jefferson circuit court, a petition filed against them in said court by John W. Russell, and warn them that, upon their failure to answer, the petition will be taken for confessed, or they will be proceeded against for comtempt; and you will make due return of this summons on the first day of the next November term of said court.

Witness Henry J. Lyons, clerk of said court, this 5th day of September, 1853.

HENRY J. LYONS.

Upon which the sheriff made this return:

Came to hand September 6, 1853. Executed, and copy delivered to Richard Christmas same day. Other parties not found.

W'M A. COCKE, *D. S.*,
CHARLES QUIREY, *S. J. C.*

The following is the answer of R. Christmas, filed in the court June 3rd, 1854, to wit:

R. Christmas' answer.

State of Kentucky, Jefferson circuit court.

JOHN W. RUSSELL, PLAINTIFF,
against
W. A. WILSON, R. CHRISTMAS, &C., DEFENDANTS. } Answer of Richard Christmas.

The defendant Richard Christmas says:

1. The writing sued on is not his act and deed.

324 2. The contract sued on was made in the State of Mississippi, where the defendant then, at the date of said writing, resided, and has ever since resided. By the laws of the said State of Mississippi, the cause of action by said contract was and is barred by the lapse of six years from the time the cause of action accrued, without suit thereon; and said six years expired on the 1st day of March, A. D. 1847, in said State of Mississippi, and said cause of action was then entirely barred by the laws of said State. At the time this suit was commenced the defendant was on a temporary visit to the State of Kentucky, and still continued to reside in the State of Mississippi.

3. The writing *if* sued on, if executed at all, was executed as and for the obligation of W. A. Wilson as the principal debtor, and the other parties intended to be bound thereon were to be bound as, and were only parties as, securities for the said Wilson; and seven years have fully elapsed without suit after the cause of action accrued on said writing now sued on, and the present cause of action did not accrue within seven years next before this suit was instituted.

4. On the 23rd February, A. D. 1841, in the commercial court

325 of New Orleans, in the State of Louisiana, the plaintiff, with the payee Samuel and others, attached the steamboat Rodolph, belonging to said Wilson, then and at the time of executing the note sued on, which was given on account of said boat, and caused the same to be sold for $3,100, at 3, 6, and 9 months from the 12 April, 1841, when she was sold to the plaintiff.

The defendant further avers that the said attachment was wrongfully sued out by said plaintiff, and by his wrongful and unjust act the said steamboat was sacrificed; that she was then worth $10,000; and that sum could have been procured for her by said Wilson but for the wrongful proceeding of said plaintiff.

This defendant files herewith as Exhibit No. 1, as a part hereof, the record and proceedings before stated.

Afterwards, on the 13 May, 1841, the same plaintiff, on the same note, attached the interest of the said Wilson in the proceeds of said sale, as appears by a copy of the record thereof in said court, herewith filed as Exhibit No. 2, made a part hereof.

5. The plaintiff is not the owner of the beneficial interest in said note;

he assigned the note to Thomas N. Lindsey, Jacob Swigert,
326 and E. H. Watson, or some of them, and does not, and did not at the time of bringing this suit, own the same.

BODLEY AND LOCKE, *Attorneys.*

STATE OF MISSISSIPPI, *City of Vicksburg, sct:*

The defendant Richard Christmas makes oath that he believes the statements of the foregoing answer to be true.

R. CHRISTMAS.

Sworn to and subscribed by R. Christmas before me this 4th day of April, 1854.

L. S. HOUGHTON, *Commissioner.*

The following are the Exhibits Nos. 1 and 2 referred to, and filed with the foregoing answer of Richard Christmas, to wit:

EXHIBIT No. 1.

State of Louisiana, commercial court of New Orleans.

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

Affidavits for writs of attachment and sequestration, filed February 23rd, 1841.

JOHN W. RUSSELL, CHURCHILL SAMUEL, Lindsey, Phillip Swigert, and Edward Watson
vs.
W. A. WILSON.

327 John Wilson Russell, being sworn, deposes that he is one of the said plaintiffs, and that he is the duly authorized agent herein of Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson, who are the other plaintiffs, and who are all absent from this State; that W. A. Wilson is justly indebted to deponent, Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson in the full sum of six thousand four hundred and twenty $\frac{42}{100}$ dollars, which will become due and payable on the fourth day of March, 1841; that said W. A. Wilson resides permanently out of this State; that said W. A. Wilson is about to remove his property out of the State of Louisiana before the said debt becomes due; that for the payment of said debt deponent, Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson have a mortgage and privilege upon the steamer Rodolph, which boat is now in the possession of said W. A. Wilson, within the jurisdiction of this court, and which boat Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson fear that said W. A. Wilson will part with during the pendency of this suit.

JOHN W. RUSSELL.

Sworn to and subscribed before me this 23rd February, 1841.

JOHN E. HOLLAND, *Deputy Clerk.*

328 *Orders for attachment and sequestration written upon said affidavit.*

Let a writ of attachment issue in this case according to law, on plaintiffs giving bond in the sum of fifteen thousand dollars, with Ogden and Southgate as sureties, conditioned as the law directs.

New Orleans, February 23d, 1841.

JOHN E. HOLLAND, *Deputy Clerk.*

Let a writ of sequestration issue in this case on plaintiffs giving bond in the sum of fifteen thousand dollars, with Ogden and Southgate as sureties, conditioned according to law.

New Orleans, February 23rd, 1841.

JOHN E. HOLLAND, *Deputy Clerk.*

Attachment and sequestration bonds annexed to said affidavit.

Know all men by these presents that we, John W. Russell, Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson, and Ogden and Southgate, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto W. A. Wilson in the sum of fifteen thousand dollars, lawful money of the United States of *of* America, to be paid to said W. A. Wilson, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we
329 bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 23rd day of February, in the year of our Lord 1841.

Whereas John W. Russell, Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson have this day presented a petition to the honorable the commercial court of New Orleans, praying a writ of attachment against W. A. Wilson, for the sum of $6,420 42 *dollars:*

Now, the condition of the above obligation is, that we, the above-bound John W. Russell and his said co-obligors, and Ogden and Southgate, will well and truly pay to the said W. A. Wilson, the defendant in said attachment, all such damages as he may recover against us in case it should be decided that the attachment was wrongfully obtained.

JOHN W. RUSSELL, [L. S.]
For myself, and as agent of Churchill Samuel, Lindsey, P. Swigert, and Edward Watson,
p. p. OGDEN AND SOUTHGATE,
L. C. OGDEN, *Attorney.* [L. S.]

Know all men by these presents that we, John W. Russsll, Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson, and
330 Ogden and Southgate, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto W. A. Wilson in the sum of fifteen thousand dollars, lawful money of the United States of America, to be paid to the said W. A. Wilson, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 23rd of February, in the year of our Lord 1841.

Whereas John W. Russell, Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson have this day presented a petition to the

honorable the commercial court of New Orleans, praying a writ of sequestration against W. A. Wilson, for the sum of $6,420 42:

Now, the condition of the above obligation is, that we, the above-bound John W. Russell and his said co-obligors, and Ogden and Southgate, will well and truly pay to the said W. A. Wilson, the defendant in said sequestration, all such damages as he may recover against us, in case it should be decided that the sequestration was wrongfully obtained.

331 JOHN W. RUSSELL, [L. S.]
For myself, and as agent for Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson,
p. OGDEN AND SOUTHGATE,
OGDEN, *Attorney.* [L. S.]

Writ of Attachment.

THE STATE OF LOUISIANA,
Commercial Court of New Orleans:

To the sheriff of the parish of Orleans, greeting:

Whereas due proof has been made before the commercial court of New Orleans by John W. Russell that W. A. Wilson is indebted to him and Churchill Samuel, Lindsey, Ph. Swigert, and Ed. Watson in the sum of six thousand four hundred and twenty $\frac{42}{100}$ dollars, and that the said defendant resides permanently out of the State of Louisiana:

Now, therefore, you are commanded, in the name of the State of Louisiana, and of the commercial court of New Orleans, to seize and attach according to law, and take into your possession, the goods and chattels, lands and tenements, rights and moneys, effects and credits, of the said defendants, if any you find in said parish, to the amount of what
332 will suffice to discharge the said debt and costs of suit; and that you give notice of this proceeding by leaving a copy thereof, in the French and English languages, at the last place of abode of the said defendant, if in said parish, and causing a true copy thereof to be affixed at the door of the parish church; and make a return thereof of this writ, and indorse thereon the manner in which you have executed it, before our court, on or before the second Monday of April, in the year of our Lord 1841.

Clerk's office, this 23rd day of February, 1841.

JOHN E. HOLLAND,
Deputy Clerk.

Sheriff's return of said writ.

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON.

Received 23rd February, 1841, and attached and took into my possession the steamer Rodolph, her machinery, books, papers, iron chest, &c., and also served petition and citation on John W. Bell, Ward, Moffat & Co., Peyreux, Arceval & Co., W. S. Brown, Zeatman & Co., Kirkman, Abernathy and Hanna, Bailey, Beck & Co., T. B. Smith, Halsey and Bell, Pinckard, Huntington & Co., Brander, Williams & Co.,
333 Franklin and Henderson, S. S. Cobb & Co., J. R. Conner, A. Ledeux & Co., Minter, Chrisholm & Co., N. and J. Dick & Co.,

Buckner, Stanton & Co., and Armour, Lake & Co., garnishees, and attached in their hands the goods and chattels, lands and tenements, moneys, effects, or property of any kind, which they might have in their possession, or under their control, belonging to the defendant, to an amount sufficient to satisfy this writ; and the defendant as herein stated, residing out of the State of Louisiana, I posted citation and attachment to the door of the church of St. Louis of Orleans, in New Orleans, and to that of the room in which this honorable court is held, and executed this writ in all things as the law directs. No other property found. Returned 4th March, 1841.

M. CURYOT,
Acting Sheriff.

Writ of sequestration.

Commercial court of New Orlerns.

The State of Louisiana to the sheriff of the parish of Orleans, greeting:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON.

You are hereby commanded, in the name of the State of Lou-
334 isiana and of the commercial court of New Orleans, to sequester and take into your possession the steamboat Rodolph, her tackle, apparel, and furniture, now in the possession of defendant, and safely to keep the same subject to the further order of this court; and what you do in the premises you make return thereof, together with this writ, to our said court, on or before the 2d Monday of April next.

Witness the Honorable Charles Watts, judge of our said court, this 23rd day of February, in the year of our Lord one thousand eight hundred and forty-one, and in the 65th year of the independence of the United States.

JOHN E. HOLLAND,
Deputy Clerk.

Sheriff's return.

Received 23rd February, 1841, and sequestered and took into my possession the steamboat Rodolph, her machinery, &c. Returned 4th March, 1841.

M. CRUZAT,
Acting Sheriff.

Petition and interrogatories to garnishees annexed.—Filed February 24th, 1841.

To the honorable the judge of the commercial court of New Orleans:

The petition of John Wilson Russell, Churchill Samuel,
335 Thomas Lindsey, Phillip Swigert, and Edmond Watson, who all reside in Frankfort, in the State of Kentucky, respectfully shows that W. A. Wilson, who resides in the State of Mississippi, is justly and truly indebted unto petitioners in the full sum of six thousand four hundred and twenty dollars and forty-two cents, with dollars, costs of protest, and interest at the rate of five per centum per annum, from the 4th day of March, 1841, for this, to wit, that petitioners are holders and

owners of a certain promissory note, for the sum of six thousand four hundred and twenty dollars and forty cents, drawn by W. A. Wilson, R. Christmas, and H. and P. H. Christmas, jointly and severally, to the order of and indorsed by one of your petitioners, Churchill Samuel, dated at Vicksburg on the 10th day of March, 1840, and payable, on the first day of March then next, at the Merchants' Banks, in the city of New Orleans, without defalcation, for value received, the payment of which note was secured by special mortgage made by W. A. Wilson, by act passed before William Christy, notary public, on the 20th March, 1840, upon the steamer Rodolph, her tackle and apparel, which mortgage was duly recorded on the enrolment of said boat; that,
336 although the said note was made payable solely to said Churchill Samuel, yet your petitioners then and now were all interested in said note; and said mortgage inures to the benefit of all said petitioners, who are owners of said note, all of which will more fully appear by reference to the said note and the authentic copy of the said act of mortgage thereof, which are hereunto annexed for reference, *on* said note is made a part hereof.

Petitioners further allege that the said W. A. Wilson, although thereunto amicably requested, refuses to pay the amount for which he is indebted as aforesaid, and he has property within the jurisdiction of this court; that petitioners have the right of mortgage upon said steamer, her tackle and apparel, for the payment of said note; that the said boat is now in the possession of said W. A. Wilson.

Petitioners, therefore, pray that the bonds and affidavit already filed, being considered as part hereof, that the writ of attachment herein issued in favor of petitioners and against W. A. Wilson for the sum of $6,420 42 *dollars*, and the writ of sequestration of said steamer Rodolph for the said sum of $6,420 42 *dollars* be maintained, and that said W. A. Wilson, who is temporarily in New Orleans, be cited to appear
337 and answer this petition; and that, after due proceedings, he be condemned to pay the petitioners the aforesaid sum of six thousand four hundred and twenty dollars and forty-two cents, with interest as aforesaid from the date aforesaid, with mortgage and privilege in preference to all other persons for the payment of said sum of money upon the property attached, and on the steamboat Rodolph, already sequestered, and costs of suit; and petitioners ask for all general and equitable relief.

Petitioners further pray that the following-named persons and commercial firms, all residing in New Orleans, be made garnishees herein, and be ordered to answer separately and individually under oath, within the legal delay, the following interrogatories, made part of this petition, and that said garnishees respectively be condemned to pay to petitioners the said sum of $6,420 42 *dollars*, with interest and costs, as above set forth, viz: Yeatman & Co., Kirkman, Abernathy and Hanna, Bayley, Beck & Co., J. B. Smith, Halsey and Bell, Pinkard, Huntington & Co., Brander, Williams & Co., Franklin and Henderson, S. S. Cobb & Co., J. R. Connor, A. Ledoux & Co., Minter, Chisholm & Co., N. and J. Dick & Co., Buckner, Stanton & Co., Armoor, Lake & Co., J. M. Bell, Ward, Moffatt & Co., Peyroux, Ariel & Co., W. S. Brown, Peyton and Smith.

338 Interrogatories to be answered under oath, within the legal delay, by all, each, and every one of the above-named garnishees, separately and individually, as follows, viz:

I. Were you, either as a commercial firm, or in your individual capa-

cities, at the time of service on you of process of attachment in this case, or have you, either as a commercial firm or in your individual capacities, been since indebted to W. A. Wilson, master and owner of the steamer Rodolph, in any sum of money, or other thing? If yea, what is the amount of said debt? Does the sum amount to nine thousand dollars?

II. Had you, either as a commercial firm or in your individual capacities, at the time of service on you of process of attachment in this case, or have you had since, either as a commercial firm or in your individual capacities, any property, rights, credits, or effects belonging to W. A. Wilson, master and owner of the steamer Rodolph? If yea, what is the amount and nature of the same? Does the same amount to nine thousand dollars.

PEYTON AND SMITH,
Attorneys of Plaintiff.

Indorsement on said petition:

"Received the note and mortgage 11th May, 1841.
"PEYTON AND SMITH."

339 *Citation to defendant.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN M. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

Mr. W. A. Wilson, residing in the State of Mississippi, but now temporarily in New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the commercial court of New Orleans, in ten days after service hereof.

Witness the Honorable Charles Watts, judge of the said court, the 25th day of February, in the year of our Lord 1841.

JOHN E. HOLLAND,
Deputy Clerk.

Sheriff's return.

Received 25th February, and on the 26th served petition and citation on the defendant in person. Returned 26th February, 1841.

M. CRUZAT,
Acting Sheriff.

340 *Citation to Yeatman & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN M. RUSSELL AND OTHERS
vs.
W. A. WILSON.

The State of Louisiana to Yeatman & Co., garnishees:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your , or in what sum you

are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Yeatman & Co., garnishees, through Yateman, one of the firm, in person. Returned 26th February, 1841.

M. CRUZAT,
Acting Sheriff.

341 *Citation to Kirkman, A., and Hanna, garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to Messrs. Kirkman, Abernathy, and Hanna, garnishees:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Kirkman, Abernathy, and Hanna, garnishees, through Mr. Kirkman, one of the firm, in person. Returned 26th February, 1841.

M. CRUZAT,
Acting Sheriff.

342 *Citation to Bayley, Beck & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON.

The State of Louisiana to Yeatman & Co., garnishees:

You are hereby cited to declare, on oath, what property you have in

your possession belonging to the defendant in this case, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Bayley, Beck & Co., garnishees, through Mr. Beck, one of the firm, in person. Returned the 26th February, 1841.

M. CRUZAT,
Acting Sheriff.

343 *Citation to J. B. Smith, garnishee.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to J. B. Smith, garnishee:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after service thereof; otherwise judgment will be entered against you for the amount claimed by plaintiff, with interest and cost.

Witness the Honorable Charles Watts, judge of said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 27th served petition and citation on J. B. Smith, garnishee, in person. Returned March 6th, 1841.

HENRY GENERELLY,
Deputy Acting Sheriff.

344 *Citation to Halsey and Bell, garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

State of Louisiana to Halsey and Bell, garnishees:

You are hereby cited to declare, on oath, what property belonging to

defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after service thereof; otherwise judgment will be entered against you for the amount claimed by plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Received 25th day of February, 1841, and on the 26th served petition and citation on Halsey and Bell, garnishees, through Mr. Halsey, one of the firm, in person. Returned 26th February, 1841.

M. CRUZAT,
Acting Sheriff.

345 *Citation to Pinckard, Huntington & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to Pinckard, Huntington & Co., garnishees:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Pinckard, Huntington & Co., through Mr. Huntington, one of the above firm, in person. Returned 26th February, 1841.

M. CRUZAT,
Acting Sheriff.

346 *Citation to Brander, Williams & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to Brander, Williams & Co., garnishees:

You are hereby cited to declare, on oath, what property belonging to

the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Brander, Williams & Co., garnishees, through Mr. Brander, one of the firm, in person. Returned 26th February, 1841.

M. CRUZAT,
Acting Sheriff.

347 *Citation to Franklin and Henderson, garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS *vs.* W. A. WILSON. } No. 3631.

The State of Louisiana to Franklin and Anderson, garnishees:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Franklin and Henderson, garnishees, through Mr. Franklin, one of the firm, in person. Returned 26th February, 1841.

M. CRUZAT,
Acting Sheriff.

348 *Citation to S. S. Cobb & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS *vs.* W. A. WILSON. } No. 3631.

The State of Louisiana to S. S. Cobb & C., garnishees:

You are hereby cited to declare, on oath, what property belonging to

the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on S. S. Cobb & Co., garnishees, by leaving the same at their office with D. Merritt, one of the firm, in person. Returned 26th February, 1841.

M. CROUZAT,
Acting Sheriff.

349 *Citation to J. R. Conner, garnishee.*

THE STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to J. R. Conner, garnishee:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to this petition of which a copy accompanies this citation, within ten days of the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on J. R. Conner, garnishee, in person. Returned 26th February, 1841.

M. CROZAT,
Acting Sheriff.

350 *Citation to Messrs. A. Ledoux & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to Messrs. A. Ledoux & Co., garnishees:

You are hereby cited to declare, on oath, what property belonging to

the defendant in this case you have in your possession, and also to answer in writing, under oath, the interrogatories annexed to this petition of which a copy accompanies this citation, within ten days after service thereof; otherwise judgment will be entered against you for the amount claimed by plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 25th served petition and citation on A. Ledoux & Co., by leaving the same at their counting-house, in Canal street, with Mr. Murray, their clerk, a free person, above the age of fourteen years. Returned 26th February, 1841.

M. CROZAT,
Acting Sheriff.

351 *Citation to Minter, Chisolm & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON } No. 3631.

The State of Louisiana to Minter, Chisolm & Co., garnishees:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Minter, Chisolm & Co., garnishees, through Mr. Minter, one of the firm, in person. Returned 26th February, 1841.

M. CROUZAT,
Acting Sheriff.

352 *Citation to Messrs. N. and J. Dick & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to N. and J. Dick &. Co., garnishees:

You are hereby cited to declare, on oath, what property belonging to

the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on N. and J. Dick & Co., garnishees, through W. J. McLean, one of the firm, in person. Returned 26th February, 1841.

M. CROZAT,
Acting Sheriff.

353 *Citation to Messrs. Buckner, Stanton & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to Messrs. Buckner, Stanton & Co., garnishees:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Buckner, Stanton & Co, garnishees, through H. S. Buckner, one of the firm, in person. Returned 26th February, 1841.

M. CROZAT,
Acting Sheriff.

354 *Citation to Armour, Lake & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to Messrs. Armour, Lake & Co., garnishees:

You are cited to declare, on oath, what property belonging to the de-

fendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to this petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the sum claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Armour, Lake & Co., garnishees, through Mr. Armour, one of the firm, in person.

M. CROUZAT,
Acting Sheriff.

355 *Citation to J. M. Bell, garnishee.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

State of Louisiana to J. M. Bell, garnishee:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to this petition of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and served, on the 26th February, petition and citation on J. W. Bell, garnishee, in person. Ret'd 26th Feb'y, 1841.

M. CROZAT,
Acting Sheriff.

356 *Citation to Ward, Moffatt & Co., garnishees.*

STATE OF LOUSIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to Ward, Moffatt & Co., garnishees:

You are hereby cited to declare, on oath, what property belonging to

the defendant in this case you have in your possession, or in what sum you are indebted to the said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, within ten days after service thereof; otherwise judgment will be entered against you for the amount claimed by plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord 1841.

PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 25th February, 1841, and on the 26th served petition and citation on Ward, Moffett & Co., through Mr. Ward, one of the firm, in person. Ret'd 26th February, 1841.

M. CRUZAT,
Acting Sheriff.

357 *Citation to Messrs. Peyroux, Arcueil & Co., garnishees.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to Messrs. Peyroux, Arcueil & Co., garnishees:

You are hereby cited to declare, on oath, what property belonging to defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition of which a copy accom-accompanies this citation, within ten days after service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiffs, with interest and costs.

Witness the Honorable Charles Watts, judge of the said court, this 24th day of February, in the year of our Lord one thousand eight hundred and forty-one.

PE. DEVERGES,
Deputy Clerk.

Received 25th February, 1841, and on the 26th February served petition and citation on Peyroux, Arcueil & Co., by leaving the same at their counting-house, on Levee street, near Custom-house street, with J. Sell, their clerk, a free person above the age of fourteen years. Ret'd 26th February, 1841.

M. CROUZAT,
Acting Sheriff.

358 *Citation to W. S. Brown, garnishee.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The State of Louisiana to W. S. Brown, garnishee:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition a copy of which accompanies this citation, within ten days after service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

PE. DEVERGES,
Deputy Clerk

Received 25th February, 1841, and on the 26th served the petition and citation on W. S. Brown, garnishee, in person. Ret'd 26th February, 1841.

M. CROUZAT,
Acting Sheriff.

359 *Answer of Kirkman, A. and Hanna, garnishees.—Filed Feb. 26th,* 1841.

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. S. WILSON. } No. 3631.

Personally appeared James J. Hanna, one of the above commercial firm of Kirkman, Abernathy and Hanna, who, being duly sworn, deposes and saith, in answer to the garnishment served on them in the above suit, that they, individually or as a firm, have no property in their possession belonging to the defendant, nor had they at the time of service of said attachment or garnishment; that they, individually or as a firm, do not owe the defendant anything, nor did they at the time of the service of said attachment, nor do they know of any property, effects, or credits in the possession of any other person belonging to said defendant; and that they do not know him.

JAMES J. HANNA.

Subscribed and sworn to before me this 26th February, 1841.
R. GARDINER,
Deputy Clerk.

360 *Answer of A. Ledoux & Co., garnishees.—Filed Feb'y 26th,* 1841.

In answer to the petition of John W. Russell vs. W. A. Wilson and others, we say that we never had and have no property belonging to

said Wilson, nor of the steamboat Rodolph; that we have no acquaintance with the Wilson, eather as correspondent, personal, or otherwise; that we never , and have no business with steamboat Rodolph.

New Orleans, 26th February, 1841.

A. LEDOUX & CO.

Sworn and subscribed before me this 26th February, 1841.

R. GARDINER,
Deputy Clerk.

Answer of N. and J. Dick & Co., garnishees.—Filed February 27th, 1841.

JOHN W. RUSSELL ET AL. *vs.* W. A. WILSON. } Commercial court.

W'm Ja's McLean, partner in the house of N. and J. Dick & Co., garnisheed in this case, answers the interrogatories proposed as follows:

To 1st interrogatory. Neither the firm of N. and J. Dick & Co., or any individual thereof, are owing or *ever* indebted in any way to the defendant since service of attachment in this case.

361 To 2d int. The firm of N. and J. Dick & Co., or any of its members, had not, at time of service of attachment in this case, or since then, any property, rights, credits, or effects belonging to the defendant.

W'M JA'S McLEAN.

Sworn and subscribed before me this 26th February, 1841.

J. E. HOLLAND,
Deputy Clerk.

Answer of Halsey and Bell, garnishees.—Filed February 27th, 1841.

To the honorable the judge of the commercial court of New Orleans:

The undersigned, one of the members of the commercial firm of Halsey and Bell, of this city, having examined all the papers served upon the said Halsey and Bell, in the matter of John W. Russell and others vs. W. A. Wilson, master and owner of the steamer Rodolph, deposeth and saith, in answer to the interrogatories therein contained, as follows, viz:

Answer to interrogatory 1st. At the time of service of the aforesaid paper neither Halsey and Bell, as a commercial firm or in their individual capacity, were indebted to W. A. Wilson, master and owner of the steamer Rodolph, in any sum or sums of money, or other things, nor have they been subsequently indebted to said Wilson.

Answer to interrogatory 2d. Neither Halsey and Bell as a commercial firm, or either of them in their individual capacities, had in
362 their or either of their possession, at the time of service of the aforesaid papers, nor have they subsequently had, nor have they at this time, either as a commercial firm or in their individual capacities, any property, rights, credits, or effects belonging to W. A. Wilson, master and owner of the steamboat Rodolph.

HALSEY AND BELL,
By JOHN M. BELL.

Sworn and subscribed this 27th February, 1841, before me.

PE. DEVERGES,
Deputy Clerk.

Answer of William S. Brown, garnishee.—Filed February 27th, 1841.

To the honorable the judge of the commercial court of the city of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON.

William S. Brown, garnishee in this case, for answer to the interrogatories to him propounded—

To the 1st interrogatory, saith he was, at the time of the service of the said interrogatories, indebted to the said W. A. Wilson, owner of the steamboat Rodolph, in the sum of five dollars $\frac{50}{100}$, for freight on said boat; and to the remainder of the interrogatory he answers no.

To the 2d interrogatory, except as above answered, no.

WILLIAM S. BROWN.

Sworn to and subscribed this 27th February, 1841, before me.

ED. GARDINER,
Deputy Clerk.

363 *Answer of Kirkman, Abernathy and Hanna, garnishees.—Filed March 2d, 1841.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. No. 3631.

Personally appeared before me James Kirkman, one of the firm of Kirkman, Abernathy and Hanna, who being duly sworn, answers and says to the garnishment served upon him in the above suit—

To the 1st interrogatory. Neither individually, nor as a commercial firm, does he owe W. A. Wilson now, or at the time the garnishment was served.

To the 2d interrogatory. Neither individually, nor as a commercial firm, did he have effects or property of W. A. Wilson at the time of the service of the process of attachment, nor has he at this time.

He further states that John T. Abernathy, one of the firm, is a resident of Alabama, and is not in the city at this time.

New Orleans, February 27th, 1840.

JOHN KIRKMAN.

Answer of Bayley, Beck & Co., garnishees.—Filed March 2d, 1841.

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON.

364 The answer of Thomas P. Baley, of the firm of Bayley, Beck & Co., to interrogatories filed in this case:

To the 1st interrogatory. No; I am neither individually, nor as a member of a commercial firm, indebted to W. A. Wilson, either at the service of the attachment, or since.

To the 2d interrogatory. No; In no capacity have I, or had I any property whatever, belonging to him; and for further answer this deponent says that John G. James, a member of the firm of Bayley, Beck & Co., resides in Rodney, Mississippi, and that he has not been in New Orleans since the service of this attachment, and that it is impossible for either partners here to answer as to any individual transaction the said James may have had with defendant.

THOMAS P. BAYLEY.

Sworn and subscribed before me this 2d March, 1841.

O. P. JACKSON, *Judge.*

Answer of Bayley, Beck & Co., garnishees.—Filed March 2d, 1841.

JOHN W. RUSSELL AND OTHERS *vs.* W. A. WILSON. } Commercial court.

The answers of Richard, of the firm of Bayley, Beck & Co., to the interrogatories filed in this case:

To the 1st interrogatory. No; I am neither individually, nor as a member of a commercial firm, indebted to W. A. Wilson, either at the service of the attachment, or since.

365 To the 2d interrogatory. No; In no capacity have I, or had I property belonging to him.

And for further answer, this respondent says that John G. James, a member of the commercial firm of Bayley, Beck & Co., resides in Rodney, Mississippi; that he has not been in New Orleans since the service of this attachment; and that it is impossible for either of the partners here to answer as to any individual transaction the said James may have had with defendant.

RICHARD BECK.

Sworn and subscribed before me this 2d March, 1841.

O. P. JACKSON, *Judge.*

Rule entered March 2d, 1841.

JOHN W. RUSSELL AND OTHERS *vs.* W. A. WILSON.

On motion of C. M. Jones, of counsel for defendant, it is ordered by the court that plaintiffs show cause, on Saturday, the 6th of March, 1841, at 10 a. m., why the attachment and sequestration in this case should not be set aside, and the suit dismissed, on the following grounds:

1st. That good and sufficient security, as required by law, has not been given.

2d. That the said suit is premature, *to* the note sued on not being due.

3rd. That the affidavit is not true, the defendant having no in-

366 tention of removing his property out of the State except in the regular course of his business, and that the property attached would have been in the State at the time the note sued on fell due.

4th. That the whole proceeding of plaintiffs are illegal and oppressive, *the* being no necessity of both an attachment and sequestration.

Sheriff's return.

Served March 2d, 1841, a copy of the written rule on Peyton and Smith, by leaving the same at their office with J. Ad. Rozier.

R. SWAIN.

Answer of T. B. Smith, garnishee.—Filed March 3rd, 1841.

In answer to the interrogatories propounded to us in the annexed writ of attachment, where John Wilson Russell, Churchill Samuel, Thomas Lindsey, Phillip Swigert, and Edward Watson are plaintiffs, and *to* W. A. Wilson, defendant, we reply, (viz:)

To 1st interrogatory. Were you, either as a commercial firm, or in your individual capacities, at the time of service on you of process of attachment in this case, or have you, either as a commercial firm, or in your individual capacities, been since indebted to W. A. Wilson, master or owner, *or other things?* If you have, what is the amount and
367 nature of said debt; does the sum amount to nine thousand dollars?

Answer. We have neither been indebted, either in our individual capacities, nor as a firm, to W. A. Wilson, since the writ of attachment was served upon us, nor to the steamer Rodolph, of which he was captain.

T. B. SMITH.

Sworn and subscribed 3d March, 1841.

ED. GARDIER,
Deputy Clerk.

2nd interrogatory. Had you, either as a commercial firm, or in your individual capacities, at the time of service on you of process of attachment in this case, or have you had since, either as a commercial firm, or in your individual capacities, any property, rights, credits, or effects belonging to W. A. Wilson, master and owner of the steamer Rodolph? If *you*, what is the amount and nature of the same? Does the same amount to nine thousand dollars?

Answer to the 2d interrogatory. We neither had at the time of service of attachment, nor since, either in our individual capacities or as a firm, any property, rights, credits, or effects belonging to W. A. Wilson, master and owner of the steamer Rodolph.

T. B. SMITH.

Sworn and subscribed 3rd March, 1841.

ED. GARDIER,
Deputy Clerk.

368 *Answer of Minter, Chisholm & Co., garnishees.—Filed March 3rd, 1841.*

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON.

To the honorable the judge of the commercial court of New Orleans:

By the attachment served on us as garnishees in this case we are required to make oath to the following questions:

"Were you, either as a commercial firm, or in individual capacities,

at the time of service on you of process of attachment in this case, or have you, either in commercial firm or in your individual capacities, been since indebted to W. A. Wilson, master and owner of the steamer Rodolph, in any sum of money or other thing? If yea, what is the amount and nature of said debt? Does the sum amount to nine thousand dollars?

"Had you, in commercial firm, or in your individual capacities, any property, rights, credits, or assets belonging to W. A. Wilson, master and owner of the steamer Rodolph? If yea, what is the amount and nature of the same? Does the sum amount to nine thousand dollars?"

369 To which interrogatories we, as partners of the firm of Minter, Chisholm & Co., and in our individual capacities, do say that we, neither at the time of the service of said attachment, or since, have had any money or effects of any description belonging to the said W. A. Wilson, master of steamer Rodolph, in our possession.

In testimony whereof we make oath before the undersigned the 2d day of March, in the year of our Lord 1841.

JAMES MINTER,
W. G. TUNSE,
Resident Partners.

Sworn to and subscribed before me this 2d day of March, 1841.
TH. N. MORGAN,
Associate Judge.

Satisfactory.
PEYTON AND SMITH.

Answer of Buckner, Stanton, &c., garnishees.—Filed March 4, 1841.

JOHN W. RUSSELL ET AL. *vs.* W. A. WILSON. } No. 3631.—Commercial court.

Henry S. Buckner, one of the commercial firm of Buckner, Stanton & Co., comes now and for answer to the interrogatories propounded to him and his said firm saith—

370 In answer to the first interrogatory: That he is the only resident partner of said firm, and the only one, from personal knowledge, competent to answer said interrogatories.

He says that neither at the time of the service of the interrogatories, or at any time subsequent, has he individually, or has his said firm, then, subsequently, or now, indebted to W. A. Wilson, or to the steamboat Rodolph.

To the second interrogatory: Answering for himself and his said firm, he saith, that neither he nor his said firm, at the time of the service of the interrogatories, or at any subsequent time, have had, nor have they now, any property, rights, credits, or effects belonging to W. A. Wilson, or to the master or owners of the steamboat Rodolph.

H. S. BUCKNER.

Sworn to and subscribed this 4th March, 1841, before me.
ED. GARDERE, *Clerk.*

Answer of Conner, garnishee.—Filed March 5th, 1841.

JOHN W. RUSSELL AND OTHERS *vs.* W. A. WILSON. } No. 3631.—Commercial court.

Answer to 1st interrogatory within annexed. I was not indebted to W. A. Wilson, at the time of the process of attachment, in any
371 amount or sum of money. I had been prior to the service of attachment indebted to Wilson, as captain steamer Rodolph, or owner, for freight and charges advanced on seven hundred and sixty-two bales of cotton, conveyed to me as agent of steamboat Wilmington, amounting *per bale* to twenty-three hundred and eighty-two $\frac{85}{100}$ dollars, but had paid over the amount before attachment was served.

Answer to 2d interrogatory. I had no effects of W. A. Wilson in my possession at the time garnishee was served on me, nor have I had since, nor do I know of any effects of his in the hands of others.

J. R. CONNER.

Sworn to and subscribed before me this 5th March, 1841.

R. GARDERE,
Deputy Clerk.

Answer of Franklin and Anderson, garnishees.—Filed March 6th, 1841.

JOHN W. RUSSELL AND OTHERS *vs.* W. A. WILSON. } No. 3631.—Commercial court of New Orleans.

The answers of Franklin and Henderson cited as garnishees in the above-named case, to the interrogatories propounded to them by the plaintiffs, states:
372 1st. To the first interrogatory they answer, as a commercial firm, and in their individual capacity, in the negative to each and every branch of said interrogatory.

2d. To the second interrogatory they also answer as a commercial firm, and in their individual capacities to each and every branch of said interrogatory in the negative.

Stephen Franklin and John D. Henderson, the only members of the commercial firm of Franklin and Henderson, (residing in this city,) the above-named garnishees being sworn, depose that the foregoing answers are true.

S. FRANKLIN.
JOHN D. HENDERSON.

Sworn and subscribed 6th March, 1841.

TH. N. MORGAN,
Associate Judge of the City Court.

Answer of J. M. Bell, garnishee.—Filed March 6th, 1841.

To the honorable the judge of the commercial court:

I am justly indebted to the steamboat Rodolph and owners in the sum of thirty-seven dollars, and was indebted at the time of service of this attachment. I do not owe the said boat and owners anything more, nor did at the time of this attachment.

JOHN M. BELL.

Sworn to and subscribed this 6th March, 1841.
P. DEVERGES, *Deputy Clerk.*

Satisfactory.
PEYTON AND SMITH.

373 *Answer of Pinckard, H. & Co., garnishees.—Filed March 6th, 1841.*

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } Commercial court of New Orleans.

The answer of G. W. Huntington, for himself and in behalf of Pinckard, Hungtington & Co.:

1st. I am not indebted, either in my individual capacity, or as one of the firm of Pinckard, Huntington & Co., to W. A. Wilson, in any sum whatever, nor was I at the time of the service of this writ of garnishment.

2d. I have not, nor has the firm of Pinckard, Huntington & Co.
G. W. HUNTINGTON.

Sworn to and subscribed this 6th March, 1841, before me.
ED. GARDERE, *Clerk.*

Judgment on rule.—Entered March 6th, 1841.

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. } No. 3631.

The rule taken in this case on the first (second) inst. to show cause this day why the attachment and sequestration in this case should not be set aside, and the suit dismissed, &c., came on this day for trial—C. M. Jones, for plaintiff in rule; Peyton and Smith, for defendant in rule.

374 After hearing pleadings and evidence, the court ordered that the rule be made absolute.

YEATMAN & Co.

Answer of J. W. Coulan, garnishee.—Filed March 8th, 1841.

JOHN W. RUSSELL AND AL.
vs.
W. A. WILSON. } In the commercial court.

James W. Coulan, one of the firm of Yeatman & Co., answers on oath to the interrogatories propounded to his said firm in the above case as follows:

To the first interrogatory. No.
To the second interrogatory. No.
J. W. COULAN.

Sworn and subscribed this 8th March, 1841, before me.
ED. GARDERE, *Clerk.*

Answer of Brander, W. & Co., garnishees.—Filed March 9th, 1841.

RUSSELL AND OTHERS
vs.
W. A. WILSON. } The commercial court of New Orleans.

The answer of Brander, Williams, & Co., by Hislop J. Brander, one of said firm, to the interrogatories in this cause propounded:

1st. To the first interrogatory he says: In my individual capacity, I am not, nor have I heretofore ever been indebted to said W. A.
375 Wilson, as master and owner of the steamer Rodolph, nor in any other capacity, in any sum of money whatever; nor am I, as member of my firm, nor is my firm now, nor have I or they, heretofore been indebted to said defendant, individually, or in the capacity aforesaid, except as follows: there were seven bales of cotton consigned to us by said boat; freight was demanded of us for the same; when we were about receiving said cotton, we objected to paying any freight, because the cotton was damaged; the boat delivered us the cotton, we simultaneously declaring that we would pay no freight, on account of said damage, which was more than the freight, and receiving the cotton under protest of our non-liability. What said claim for freight was, I do not know; it could not have been more, as I believe, than a dollar per bale, at the utmost. None of my firm are or have been individually indebted to said Wilson, individually nor in the aforecited capacity.

2d. To the interrogatory, for himself, his firm, and the individuals of his firm, he answers no.

HESLOP G. BRANDER.

Sworn to and subscribed before me March 9th, 1841.

JOHN E. HOLLAND,
Deputy Clerk.

Satisfactory for all the partners.

PEYTON AND SMITH.

376 *Answer of Cobb & Co., garnishees.—Filed March 9th*, 1841.

JOHN W. RUSSELL AND OTHERS
vs.
W. A. WILSON. }

In answer to the first interrogatory, in the case of John W. Russell and others vs. W. A. Wilson, we are indebted to W. A. Wilson, or the steamboat Rodolph, for the frieight of one bale of cotton, and no more.

In answer to the second interrogatory, we answer that we have *have* nothing in our hands at the time, or previous to the service of the attachment in the above case.

New Orleans, 2d March, 1841.

SAMUEL S. COBB & CO.

The above answers are satisfactory.
2d March, 1841.

PEYTON AND SMITH,
For Plaintiffs.

Petition of appeal.—Filed March 9th, 1841.

JOHN W. RUSSELL AND OTHERS } Commercial court.
vs.
W. A. WILSON. }

The petition of John Wilson Russell, Churchill Samuel, Thomas Lindsey, Phillip Swigert, and Edward Watson respectfully shows—

That they are advised and believe there is error in the judgment of this court setting aside the writs of sequestration and attach-
377 ment herein issued. That said judgment operates an irreparable injury to said plaintiffs, who are entitled to an appeal therefrom.

They pray, considering the annexed bond as part hereof, for an order of appeal from said judgment to the Supreme Court, and they pray that said Wilson be cited in appeal, and for general relief.

PEYTON AND SMITH.

Order for appeal.

An appeal is allowed from the judgment setting aside the writ of sequestration issued in this case, returnable in the Supreme Court on the first Monday of April next, on the appellants giving bond, with good and solvent security, in the sum of one hundred dollars, conditioned as the law directs.

New Orleans, 9th March, 1841.

C. WATTS, *Judge.*

Appeal bond annexed to petition of appeal.

Know all men by these presents that we, John Wilson Russell, Churchill Samuel, Thomas Lindsey, Phillip Swigert, and Edward Watson, and Ogden and Southgate, are held and firmly bound unto W. A. Wilson, executors, administrators, and assigns, in the sum of one hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this 9th day of March,
378 in the year of our Lord one thousand eight hundred and forty-one.

Whereas the above-bound John Wilson Russell and his co-obligors have this day filed a petition of appeal from a certain interlocutory judgment rendered against them in the suit of John W. Russell al. vs. W. A. Wilson, in the commercial court of New Orleans, on the 9th day of March, 1841:

Now, the condition of the above obligation is such, that the above-bound John Wilson Russell his co-obligors shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said Ogden and Southgate, surety, shall be liable in their place.

JOHN WILSON RUSSELL,
CHURCHILL SAMUEL,
PHILLIP SWIGERT,
EDWARD WATSON,
THOMAS LINDSEY,
By JOHN W. RUSSELL. [L. S.]
p. p. OGDEN AND SOUTHGATE. [L. S.]
OGDEN, *Sol's.*

379 *Answer of Peyroux & Co., garnishees.—Filed March 11th, 1841.*

Answers of Peyroux, Arcueil & Co. to interrogatories propounded in the case of John W. Russell and others vs. W. S. Wilson, No. 3631, commercial court:

Answer 1. Nay.

Answer 2. Nay.

New Orleans, March 10, 1841.

J. O. PEYROUX.

Sworn to and subscribed before me the 11th March, 1841.

O. P. JACKSON, *Judge.*

Plaintiffs' bill of exceptions.—Filed March 12, 1841.

J. W. RUSSELL ET AL. *vs.* W. A. WILSON. } Commercial court.

Be it remembered that, on the trial of the rule to set aside the orders of sequestration and attachment in this case, the defendant offered the testimony, which is taken in writing, to the admissibility of which the said plaintiffs objected on the following grounds:

1st. There are no allegations in the rule and grounds to authorize the admission of the testimony.

2d. The said testimony is wholly illegal.

3rd. It is irrelevant.

But the court overruled the objections and admitted said testimony, to which decision of the court the plaintiffs except and pray that
380 this their bill of exceptions be signed.

C. WATTS, *Judge.*

Agreed to, and may be signed nunc pro tunc.

C. M. JONES.

Rule to have property attached sold, and grounds.—Entered March 12th, 12 1841.

J. W. RUSSELL AND OTHERS *vs.* W. A. WILSON. } No. 3631.

On motion of Peyton and Smith, of counsel for said plaintiffs, it is ordered by the court that said defendant do show cause, on Wednesday, 17th March, 1841, at 10 o'clock a. m., why the steamer Rodolph herein attached shall not be sold forthwith, on the ground that said boat is perishable property, and will deteriorate during the pending of this suit.

Sheriff's return.

Received 12th March, 1841, and served copy of this rule on C. M. Jones in person. Returned 12th March, 1841.

LS. A. DUCROS,
Sheriff Com'l Court.

Answer of Ward, Moffatt & Co., garnishees.—Filed March 13th, 1841.

NEW ORLEANS, *March 2d*, 1841.

In answer to the above notice we state that we have no money or property in our hands belonging to W. A. Wilson.

WARD, MOFFATT & CO.

I am satisfied with the above answer.
March 4th, 1841.

JOHN W. RUSSELL.

381 *Agreement to sell property attached.—Filed March 15th*, 1841.

JOHN W. RUSSELL ET AL.
vs.
W. A. WILSON. } Commercial court.

It is hereby agreed that the steamboat Rodolph attached in this suit be sold by the sheriff of the commercial court of New Orleans, at public auction, on Wednesday, 24th March, 1841, on a credit of three, six, and nine months, for approved paper, with city indorsements *on* acceptances, and bearing mortgage upon the boat till final payment.

This sale to affect in no manner the right of any of the parties, but is made and agreed upon for the purpose of avoiding the expense that would be incurred in case the boat should be kept until the decision of the suit, and proceeds to be held by sheriff subject to the further order of court.

March 13th, 1841.

PEYTON AND SMITH,
For Russell.
W. A. WILSON.

Order of sale.—Entered March 15th, 1841.

J. W. RUSSELL ET AL.
vs.
W. A. WILSON. } No. 3631.

On motion of C. M. Jones, of counsel for defendant, and on
382 filing agreement:

Ordered, that the steamer Rodolph, attached in this case, be sold by the sheriff of this court on the 24th March, 1841, on a credit of three, six, and nine months, for approved paper, with city indorsements or exceptances, and bearing mortgage on the boat till paid, the proceeds to be by him held subject to the further order of this court.

Sheriff's return on copy of said order.

Received 15th March, 1841, and in obedience to the within order, and by consent of parties, advertised for sale the steamboat Rodolph, her machinery, &c., which was sold at the City Exchange, St. Louis street, on the 12th April, 1841, to J. W. Russell, for the sum of $1,300, at three, six, and nine months' notes, indorsed by S. C. Ogden, which notes I hold subject to the further order of this court. Returned 30th June, 1841.

LS. A. DUCROS,
Sheriff Com'l Court.

Consent to appoint receiver.—Filed March 17th, 1841.

JOHN W. RUSSELL ET AL.
vs
W. A. WILSON.

It is agreed that the books and accounts of the steamer Rodolph, sequestered in this case, be delivered to Ward, Moffatt & Co., in
383 order that the same be collected, and, when collected, the same be applied to the payment of those debts that may be decided by the court to be privileged; and that Ward, Moffatt & Co. be authorized to collect said debts and accounts.

PEYTON AND SMITH.
C. M. JONES.

Order appointing receiver.—Entered March 17th, 1841.

JOHN W. RUSSELL ET AL.
vs.
W. A. WILSON. No. 3631.

On motion of J. W. Smith, of counsel for plaintiffs, and on filing consent, ordered that the books and accounts of the steamer Rodolph, sequestered in this case, be delivered to Ward, Moffatt & Co., in order that the same be collected, and when collected the same to be applied to the payment of those debts that may be decided by the court to be privileged; and that Ward, Moffatt & Co. be authorized to collect said debts and accounts.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

I, William C. Auld, clerk of the fourth district court of New Orleans, State aforesaid, do hereby certify that the above and foregoing pages contain a full and complete transcript of the record of the case
384 wherein John W. Russell and are plaintiffs, and W. A. Wilson is defendant, instituted in the late commercial court of New Orleans, and now on the records thereof under the number 3631.

And I do further certify that, pursuant to an act of the legislature of the State approved the 30th day of April, 1846, the records of the said late commercial court have been transferred to this court, and are now in my custody and possession as clerk aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this eighth day of December, in the year of our Lord eighteen hundred and fifty-three, and in the seventy-eighth year of the independence of the United States of America.

[SEAL.] W'M C. AULD, *Clerk.*

I, Mortimer M. Reynolds, sole judge of the fourth district court of New Orleans, do hereby certify that William C. Auld, whose signature appears to the foregoing certificate, is now, and was at the time of signing the same, clerk of the said court, and that the signature, "W'm C. Auld, clerk," to the said certificate is in the proper handwriting of him, the said clerk. To his official acts as such full faith and credit
385 are due. And I do further certify his attestation to be in due form of law.

Given under my hand, at the city of New Orleans, this 8th day of December, A. D. 1853.

M. M. REYNOLDS, *Judge.*

EXHIBIT No. 2.

THE STATE OF LOUISIANA,
Commercial Court of New Orleans:

JOHN W. RUSSELL ET AL. } No. 4056.
vs.
W. A. WILSON. }

Affidavit and order for attachment.

JOHN W. RUSSELL ET AL. } Com'l court.
vs.
W. A. WILSON. }

S. C. Ogden, being sworn, deposes that he is the duly authorized agent herein of John Wilson Russell, Churchill Samuel, Lindsey, Phillip Swigert, and Edward Watson, the plaintiffs in this cause, who are all absent from the State of Louisiana; that W. A. Wilson is justly indebted to said plaintiffs in the full sum of six thousand four hundred and twenty and $\frac{42}{100}$ dollars, which is now due and payable; that said W. A. Wilson resides out of this State.

S. C. OGDEN.

Sworn to and subscribed before me this 13th May, 1841.

O. P. JACKSON, *Judge.*

386 It is ordered that an attachment issue in this case as prayed for, plaintiffs giving bond, with S. C. Ogden as surety, in the sum of fifteen thousand dollars, conditioned as the law directs.

13th May, 1841.

R. GARDERE, *Deputy Clerk.*

Attachment bond annexed to affidavit.

Know all men by these presents that we, John W. Russell, Church' Samuel, Lindsey, Phillip Swigert, and Edward Watson, are held and firmly bound unto W. A. Wilson in the sum of fifteen thousand dollars, lawful money of the United States of America, to be paid to the said W. A. Wilson, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 13th day of May, in the year of our Lord 1841.

Whereas said John W. Russell, and the other obligors, have this day presented a petition to the honorable the commercial court of New Orleans, praying an attachment against W. A. Wilson for $6,420 42:

Now, the condition of the above obligation is, that we, the above-bound John W. Russell and his co-obligors, and S. C. Ogden, will well and truly pay to the said W. A. Wilson, the defendant in said
387 attachment, all such damages as he may recover against us in case it should be decided that the attachment was wrongfully obtained.

For J. M. Russell, C. Samuel, Lindsay, Phillip Swigert, and Edward Watson,

S. D. OGDEN, [L. S.]
Attorney in fact.
S. D. OGDEN. [L. S.]

Signed, sealed, and delivered in the presence of—
JA'S ROZIER.

Writ of attachment.

THE STATE OF LOUISIANA,
Commercial Court of New Orleans:

The State of Louisiana to the sheriff of the commercial court of New Orleans, greeting:

Whereas due proof has been made before the commercial court of New Orleans, by S. E. Ogden, agent, that W. A. Wilson is indebted to John W. Russell, Churchill Samuel, Lindsay, Phillip Swigert, and Edward Watson in the sum of six thousand four hundred and twenty $\frac{42}{100}$ dollars, and that the said W. A. Wilson resides permanently out of the State of Louisiana:

Now, therefore, you are commanded, in the name of the State of Louisiana and the commercial court of New Orleans, to seize and attach, according to law, and take into your possession, the goods and chattels, lands and tenements, rights and moneys, effects and credits, of the
388 said W. A. Wilson, if any you find in said parish, to the amount what will suffice to discharge said debts and costs of said suit, and that you give notice of this proceeding by leaving a copy thereof in the French and English languages at the last place of abode of the said defendant, if in said parish, and causing a true copy thereof to be affixed at the door of the parish church of said parish, and make return of this writ, and indorse thereon the manner in which you have executed it, before our court, on or before the first Monday of June, in the year of our Lord 1841.

Clerk's office, this 13th day of May, 1841.

R. GARDERE,
Deputy Clerk.

Sheriff's return of said writ.

JOHN W. RUSSELL ET AL.
vs.
W. A. WILSON. } No. 4056.

Received 13th May, 1841, at 11 o'clock a. m., and attached, in the hands of the sheriff of the commercial court of New Orleans, the proceeds of the steamboat Rodolph, sold in the case of Russell vs. Wilson, and the defendant, as herein stated, residing out of the State, I posted copy of citation and attachment to the door of the church of St. Louis, of Orleans, and also to that of the room in which this honorable court is held, and executed this writ in all things as the law directs.

Returned first Monday of June, 1841.

LS. A. DUCROS,
Sheriff Commercial Court.

389 *Petition.—Filed May 14th,* 1841.

To the honorable the judge of the commercial court of New Orleans:

The petition of John Wilson Russell, Churchill Samuel, Thomas Lindsay, Phillip Swigert, and Edward Watson, who all reside in Frankfort, in the State of Kentucky, respectfully shows that W. A. Wilson, who resides in the State of Mississippi, is justly indebted unto petitioners in the full sum of six thousand four hundred and twenty dollars and forty-two cents, and interest at the rate of five per centum per annum from the 4th day of March, 1841, for this, to wit: that petitioners are holders and owners of a certain promissory note for the sum of six thousand four hundred and twenty dollars and forty-two cents, drawn by W. A. Wilson, R. Christmas, and H. and T. H. Christmas, jointly and severally, to the order of, and indorsed by, one of your petitioners, Churchill Samuel, dated at Vicksburg, on the 10th day of March, 1840, and payable on the first day of March then next, at the Merchants' Bank, in the city of New Orleans, without defalcation, for value received, the payment of which note was secured by special mortgage, made by said W. A Wilson, by act passed before W. Christy, notary public, on the 20th
390 March, 1840, upon the steamer Rodolph, her tackle and apparel, which mortgage was duly recorded on the enrollment of said boat; that, although the note was made payable solely to said Churchill Samuel, yet your petitioners then and now were all interested in said note, and said mortgage inures to the benefit of all of said petitioners, who are the owners of said note; all which will more fully appear by reference to the said note and the authentic copy of the act of said mortgage thereof, which are hereunto annexed for reference, and said note is made part hereof.

Petitioners further allege that the said W. A. Wilson, although thereunto amicably requested, refuses to pay the amount for which he is indebted as aforesaid, and he has property within the jurisdiction of this court; that petitioners have the right of mortgage upon said steamer, her tackle, and apparel, for the payment of said note; that the said boat is now in the possession of said W. A. Wilson; that the demand of payment of said note was, before this suit was brought, duly made at the Merchants' Bank, in the city of New Orleans, and payment was refused.

Petitioners therefore pray that the bond and affidavit already filed being considered as parts hereof, that the writ of attachment
391 herein issued in favor of petitioners, and against W. A. *Watson*, for the sum of $6,420 42 *dollars*, and the writ of sequestration of said steamer Rodolph for the said sum of 6,420 $\frac{42}{100}$ dollars, be maintained; and that said W. A. Wilson, who is temporarily in New Orleans, be cited to appear and answer this petition; and that, after due proceedings, he be condemned to pay the petitioners the aforesaid sum of six thousand four hundred and twenty dollars and forty-two cents, with interest as aforesaid from the date aforesaid, with mortgage and privilege in reference to all other persons for the payment of said sum money upon the property attached, and on the steamboat Rodolph, already sequestered, and costs of suit.

And petitioners ask for all general and equitable relief.

PEYTON AND SMITH,
For Plaintiffs.

Indorsement on said petition.

Received the original note sued on 4th March, 1842.

PEYTON AND SMITH.

Service accepted, and citation waived.

C. M. JONES,
For Defendant.

Act of mortgage annexed to petition.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that this day, before me, William Christy, a no-
392 tary public, in and for the said city and parish of New Orleans, duly commissioned and qualified, personally came and appeared William A. Wilson, of Yazoo County, in the State of Mississippi, who declared that he is justly and truly indebted unto Churchill Samuel, of Frankfort, in the State of Kentucky, in the sum of six thousand four hundred and twenty dollars and forty-two cents, balance of account, for which he has given a promissory note, drawn by him, said Wilson, R. Christmas, and T. H. Christmas, jointly and severally, to the order of Churchill Samuel, dated on the tenth day of March, instant, and made payable at the Merchants' Bank, in this city, on the first day of March next, which note, after having been *paraptued* by me, said notary, to identify it with this act, was delivered to the said Churchill Samuel, who hereby acknowledges the receipt thereof:

Now, therefore, in order to secure the full and punctual payment of the said promissory note at maturity, the said Wilson, moreover *that he declared* that he does by these presents specially mortgage and hypothecate unto the said Churchill Samuel, present and accepting for himself,
his heirs, and assigns, the steamboat called the "Rodolph," of Ya-
393 zoo, of one hundred and fifty tons' burthen, together with the engines, boilers, tackle, apparel, and furniture, promising and hereby binding himself, his heirs and assigns, not to alienate, deteriorate, or incumber the same to the prejudice of this mortgage.

Thus done and passed in my office, at the city of New Orleans aforesaid, in the presence of William G. Latham and George Rareschide, witnesses of lawful age, and domiciliated in this city, who hereunto subscribe their names, together with the said appearers, and me, said notary, on this twentieth day of March, in the year of our Lord one thousand eight hundred and forty.

(Original signed)

W. A. WILSON.
CHURCHILL SAMUEL.
W. G. LATHAM.
GEO. RARESCHIDE.
W'M CHRISTY,
Notary Public.

I certify the foregoing to be a true copy of the original act.

In faith whereof I grant these presents under my signature, and the impress of my seal of office, at New Orleans, this twenty-fourth day of February, eighteen hundred and forty-one.

W'M CHRISTY,
Notary Public.

394 *Copy of note annexed to said petition.*

J. W. RUSSELL ET AL.
vs.
W. A. WILSON.
No. 4056.

$6,420 42. VICKSBURG, *March* 10, 1840.

On the first day of March next we jointly and severally promise to

pay to Churchill Samuel, or order, six thousand four hundred and twenty $\frac{42}{100}$ dollars, at the Merchants' Bank, in the city of New Orleans, without defalcation, for value received.

(Signed) W. A. WILSON.
(Signed) R. CHRISTMAS.
(Signed) H. AND T. H. CHRISTMAS.

Ne varietur, in conformity with an act of mortgage passed before me this day.

(Signed) W'M CHRISTY,
Notary Public.

NEW ORLEANS, *March* 20, 1846.

(Indorsed:) Churchill Samuel, John W. Russell.

COMMERCIAL COURT OF NEW ORLEANS,
Clerk's Office, March 4th, 1842.

A true copy.

R. GARDERE,
Deputy Clerk.

395 *Default.—Entered June 8th*, 1841.

J. W. RUSSELL ET AL.
vs.
W. A. WILSON. } No. 4056.

On motion of J. W. Smith, of counsel for plaintiffs, and on showing to the court that defendant has failed to answer, though he had duly accepted service of the petition and citation,

Ordered, that judgment by default be herein rendered.

Answer.—Filed June 16th, 1841.

To the honorable the judge of the commercial court of New Orleans:

The answer of A. W. Wilson to the petition of J. W. Russell respectfully shows, that he denies each and every the allegations of petition, and prays to be dismissed with costs, &c.

C. M. JONES,
For Respondent.

Order, default set aside.—Entered June 16th, 1841.

J. W. RUSSELL
vs.
A. W. WILSON. } No. 4056.

On motion of C. M. Jones, of counsel for defendant, and on filing said defendant's answer,

Ordered, that the judgment by default herein rendered be set aside.

396 *Judgment.*

J. W. RUSSELL ET AL.
vs.
W. A. WILSON. } No. 4056.

The plaintiffs having proved the allegations of their petition, it is

considered that the plaintiffs recover from the defendant, W. A. Wilson, sixty-four hundred and twenty $\frac{42}{100}$ dollars, with five per cent. interest thereon from 4th March, 1841, till paid, and costs of suit, with privilege on the property seized.

Rendered 29th November, 1841. Signed 3rd December, 1841.

C. WATTS, *Judge.*

Sheriff's return of service of copy of said judgment.

Received 3rd December, 1841, and on the 4th served copy of the within judgment on C. M. Jones, attorney for the defendant, who accepted service of the same. Returned 4th Dec., 1841.

LS. A. DUCROS,
Sheriff Com. Court.

Writ of fieri facias.

STATE OF LOUISIANA,
Commercial Court of New Orleans:

The State of Louisiana to the sheriff of the commercial court of New Orleans, greeting:

397 We command you, in the name of the State of Louisiana and of the commercial court of New Orleans, that you demand from W. A. Wilson the sum of sixty-four hundred and twenty $\frac{42}{100}$ dollars, with five per cent. interest thereon from 4th March, 1841, till paid, and also the sum of nineteen $\frac{75}{100}$ dollars costs, which J. W. Russell et al. lately recovered, by judgment of the commercial court of New Orleans; and if he shall not pay the same after legal demand, that then you cause the same to be paid out of the personal estate of the said W. A. Wilson, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found; but if sufficient personal estate of W. A. Wilson, exclusive of slaves, cannot be found in your district, that then you cause the said sum to be made of the real estate and slaves of said W. A. Wilson, in your district, whereof he was owner on the 3rd day of December, 1841, in whose hands soever the same may have come, and that you have those moneys before our said court, to render the said J. W. Russell et al. for the judgment aforesaid, on the second Monday of March next, together with this writ.

Witness the Honorable Charles Watts, judge of said court, the 25th day of January, in the year of our Lord one thousand eight hun-
398 dred and forty-two, and in the 66th year of the independence of the United States.

R. GARDERE,
Deputy Clerk.

Judgment	$6,420 42
Interest	
Costs	19 75
Tax	15 00

Sheriff's return of said writ.

Received 25th January, 1842, and seized the proceeds of three notes, dated 31 May, 1841, at 3, 6, and 9 months, in favor of, and indorsed by, S. C. Ogden, for $1,033 33 each, drawn by J. W. Russell and protested for non-payment, which said were given to me in payment of the

steamer Rodolph, and of which seizure nothing has yet come to my hands; and executed this writ in all things as the law directs. No other property found. Returned 2d Monday of March, 1842.

LS. A. DUCROS,
Sheriff Com'l Court.

STATE OF LOUISIANA,
Fourth District Court of New Orleans:

I, William C. Auld, clerk of the fourth district court of New Orleans, State aforesaid, do hereby certify that the above and foregoing pages contain a full and complete transcript of the record of the case wherein "J. W. Russell et al." are plaintiffs, and W. A. Wilson
399 is defendant, instituted in the late commercial court of New Orleans, and now on the records thereof under the number 4056; and I do further certify that, pursuant to an act of the legislature of this State, approved the 30th day of April, 1846, the records of the said late commercial court have been transferred to this court, and are now in my custody and possession as clerk aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this second day of December, in the year of our Lord one thousand eight hundred and fifty-three, and in the seventy-eighth year of the independence of the United States of America.

[L. S.] WM. C. AULD, *Clerk.*

I, Mortimer M. Reynolds, sole judge of the fourth district court of New Orleans, do hereby certify that William C. Auld, whose signature appears to the above certificate, is now, and was at the time of signing the same, clerk of the said court, and that the signature "W. C. Auld, clerk," to the said certificate, is in the proper handwriting of him, the said clerk; to his official acts as such full faith and credit are
400 due; and I further certify his attestation to be in due form of law.

Given under my hand, at the city of New Orleans, this 2d day of December, A. D. 1853. M. M. REYNOLDS, *Judge.*

And at a court continued and held as aforesaid, on the 9th day of June, 1854, came the parties by their attorneys, and the plaintiff waived all exceptions to the depositions taken by the defendants; and all further proceedings are continued until the next term of this court.

And at a court continued and held as aforesaid, on the 17th day of November, 1854, came the parties by their attorneys, and the plaintiff by leave of court filed an amended petition herein; and all further proceedings are continued until the next term of this court.

The following is the amended petition referred to and filed in the above order, to wit:

Amended petition.

JOHN W. RUSSELL, PLAINTIFF,
against
RICHARD CHRISTMAS, E. W. WATSON, JACOB Swigert, Phillip Swigert, Thomas N. Lindsay, self, as adm'r C. Samuel, deceased, defendants.

JEFFERSON CIRCUIT, *sct:*

The plaintiff amends his petition herein by stating that the per-

401 sons above named as defendants, except Christmas, have an interest with himself in the note sued upon, though the same is in the name of plaintiff Russell. He charges that about the year 183 , said Richard Christmas, either for himself or in conjunction with the other payers of the note sued on, bought from plaintiff and said Swigert, Watson, Thomas N. Lindsay, (and C. Samuel, now deceased, and on whose estate said Th. N. Lindsey is administrator,) the steamer Rodolph. The purchase was arranged by said defendant Richard Christmas, at the city of Cincinnati, or at Louisville, Kentucky—plaintiff does not remember certainly which place; said C. Samuel acting at the time for himself, plaintiff, and other owners of said boat. In arranging the payments for said boat, the said Richard Christmas gave his acceptance for some of the instalments, payable at New Orleans, Louisiana; that he gave one acceptance, payable the day of , for $ Shortly before this acceptance fell due, said Richard Christmas wrote the letter herewith presented as part hereof, marked X, asking to be permitted to renew said acceptance, and the result was the giving of the note sued upon to take up the former acceptances of the said Richard Christmas; so that plaintiff charges that if the owner of said
402 boat have in any way been deluded or deceived by the said Richard Christmas, or his associates, in the taking of the last note, the one sued on, they are entitled to recover of the said Christmas the amount of this acceptance, for which said note was given, which said acceptance was given up when said last note was given; they believing, as they do still, that said Richard Christmas was still bound, never having agreed or intended to agree to his release.

The plaintiff further states that Richard Christmas being during all the time since said note sued upon fell due insolvent, they did not sue him; at least, he so kept his means, as plaintiff was advised, that nothing could be coerced from him. The said Churchill Samuel, who negotiated the sale of said boat with said defendant Richard Christmas having died, they feel justified in asking said defendant, Richard Christmas, a few plain questions:

1st. Did you or not, for yourself and brother, buy from Churchill Samuel, now deceased, the steamer Rodolph, then belonging to the persons above named, as her owners? If yea, at what price, at what place, and for what sum, and on what payments, and how was the evidence of your indebtedness arranged?

403 2d. Did you not have the transfer of the boat's papers made to you as an owner, and did you not have *the transfer of the boat's paper made to you as an owner? and did you not have* said boat entered at the custom-house in the name of yourself and brothers?

3rd. Did you not for payment in part give to C. Samuel the acceptance of yourself, drawn on you by Wilson or your brothers for the amount of money owing for said boat, which was not paid, but for which the note sued on was given?

4th. Did you not write to C. Samuel the letter filed with this amended petition? If it is not in your handwriting, did you not cause it to be written or know of its having been written, and was not your acceptance taken up by said note?

5th. Did you not verbally and by letter promise C. Samuel repeatedly in his lifetime to pay said note, and express your regret that you were unable at the several times to pay the same?

6th. Have you not had various executions in Mississippi returned against you, no property found in substance?

7th. Whose handwriting is the signature R. Christmas on the note

sued upon? Is this note the only one he ever put your name to; and, if not, have you not sometimes such acts by paying papers to which your name had been put?

404 8th. Will you please state who constituted the firm of Christmas and Brother, or whatever it was styled, at New Orleans or elsewhere, when you purchased the Rodolph, and what interest you had therein.

9th. Have you answered the foregoing questions without mental qualifications or reservation, and do you, in conclusion, with your attention specially called thereto, and with the foregoing precautions given you, swear, in due form of law, that you were not bound as principal in the purchase of the Rodolph, in the giving of the acceptance for which the note sued on was given, and that you did not fully know said note was given, and its purposes?

10th. Did you not, long after the said note was given, promise plaintiff in person to pay said note?

JOHN W. RUSSELL.

STATE OF KENTUCKY, *Franklin County, set:*

John W. Russell states that he believes the statements of the foregoing amended petition to be true; that he believes the answer of defendant Richard Christmas, who is absent from the State of Kentucky, to the interrogatories filed with this amended petition, will result in his admitting he bought the steamer Rodolph; and that the note sued on was given as stated in this amended petition, to take up the ac-

405 ceptance of said Christmas; and that he was a principal in said purchase.

Plaintiff says he does not file said interrogatories for delay.

JOHN W. RUSSELL.

Sworn to before the undersigned, a justice of the peace for Franklin County, State of Kentucky, by John W. Russell, 22d July, 1854.

G. W. GWIN, *J. P. F. C.*

The plaintiff amends his petition by saying the draft referred to in his pleading was for $6,000 due 1st January, 1840.

BARRETT AND WOOD,
Attorneys for Plaintiff.

The following is the letter referred to in the foregoing amended petition, to wit:

VICKSBURG, *December 19th*, 1839.

Mr. CHURCHILL SAMUEL.

SIR: My draft for $6,000 falls due in New Orleans on 1–4 January, given for steamer Rodolph, which, I fear, I will not be able to pay at maturity. I shall endeavor to pay a part, say $2,000 or $2,500, on it, and must ask the favor to renew it for ninety days. Cotton being so very low, I dislike exceedingly to sell. My interest in the boat I have parted with, and am to receive my pay on 20th March. By ex-

406 tending the payment of this you will much oblige me. The *unprecedate terms* is sufficient apology for the request.

Let me hear from you immediately, and oblige yours, respectfully,

R. CHRISTMAS.

And at a court continued and held as aforesaid, on the 13th day of

January, 1855, came the defendant Richard Christmas, by his attorney, and by leave of the court filed his answer to the amended petition of the plaintiff herein.

The following is the answer to the amended petition referred to in the above order, to wit:

State of Kentucky, Jefferson circuit.

JOHN W. RUSSELL, PLAINTIFF,
vs.
RICHARD CHRISTMAS ET AL., DEFENDANTS.

The answer of Richard Christmas to the amended petition filed against him in said case by said plaintiff.

For answer thereto, said defendant says that about the year 183 , he purchased at Harrodsburg Springs, Kentucky, *for* said Churchill Samuel, the steamer Rodolph; that the other parties named in said petition as endorsers of said boat, had nothing to do with the sale thereof to him. He made purchase for himself. Other persons spoke of
407 taking an interest therein, among whom was Mr. C. Young, Thomas Christmas, (the last defendant within,) and J. Jennings; none of whom, however, ever became interested in the purchase, or paid any part of the purchase-money, I arranging the payment for said boat. This defendant drew his three drafs on himself, one for $6,000, falling due, I think, on the 1-4 January, 1840—this one payable in New Orlerns—and accepted each of said drafts. He cannot say where or when the others became due or were payable. Said arrangement was not made either in Louisville, Kentucky, or in Cincinnati, in the State of Ohio; all of which drafts, as defendant believes, were settled and paid, as he was informed both by Wilson and said C. Samuel, both of whom were parties, payee and maker, of the note sued on.

Said defendant admits the writing of the letter marked Exhibit X to said amended petition, but denies that the result of said letter was the giving of the note sued on, so far as he knows or believes, to take up the former acceptances of this defendant. Said acceptance may have been taken up in that manner, but, from information which this defendant received from said Churchill Samuel, he believes and states that it was given to take up a debt of Wilson, and not the said acceptance.
408 He denies that said plaintiffs, or either of them, have been deluded by him, and denies that they, or either of them, are entitled in any manner to recover from him on said acceptance.

Said defendant avers that at the commencement of this action, more than five years had elapsed (without suit) after the supposed right of action accrued on said acceptance, and this defendant relies on the statute of limitations and on lapse of time.

Said defendant avers that while he was, during the time referred to by said plaintiff in said amended petition, in embarrassed circumstances, yet he avers that he never attempted to conceal his effects. He denies that plaintiff had any knowledge of how he kept his means.

Defendant will now proceed to answer the question propounded to him.

Answer to question 1. I purchased from said Churchill Samuel said steamer Rodolph for myself, and knew of no one else interested in said boat as owner, so far as I can remember. My recollection is that I gave

$18,000 for the boat; that I purchased her at Harrodsburg Springs, Kentucky. The payments were arranged in three drafts, whether equal instalments or not, I cannot remember. Said drafts were drawn on and accepted by myself; the first two of which were payable in Vicks-
409 burg, Missi., and the last one for $6,000, due 1–4 January, 1840, was payable in New Orleans, Louisiana, and was the one referred in the letter marked X.

Answer to question 2. Mr. Samuel was to have had the transfer of the boat and her papers made to me; whether he did so or not I do not know. I do not know how said boat was entered in Louisville, of my own knowledge. I do not know whether a transfer of the boat's papers was made to me as owner or not. Mr. Samuel was to have done so.

Answer to question 3. I have described the terms and from whom I purchased said boat, and have no knowledge or recollection of any such draft or acceptance as named in said question; do not know whether any such draft was paid, or whether the note sued on was given for any such draft.

He further answers that he does not of his own knowledge know that the note sued on was given for the acceptance described by the plaintiff; on the contrary, he has information, derived from said C. Samuel in his lifetime, that that acceptance was not the consideration of the giving of the note sued on, but an acceptance of debt of a different description was the consideration of giving that note, and it was given
410 to pay Wilson's debt for the Rodolph, he being then, and for many months previously, the owner of said boat, the defendant nor his brother then, in fact, being interested in said boat as owner. This *this* defendant believes said statement of said C. Samuel to be true. My recollection is that my $6,000 acceptance, falling due 1–4 January, 1840, was taken up and handed to me by Wilson, and I gave Wilson credit by the amount of that acceptance on his debt due to me. How he took up said $6,000 acceptance I do not know, as I was not present when the transaction of taking up the acceptance by Wilson occurred.

Answer to question 4. I wrote the letter filed with the amended petition; it is in my handwriting, I think, as I only have a copy of it before me. I do not think my acceptance was taken up by said note, for the reason I have stated in the third answer. If it was so taken up, it was without my knowledge, as I did not know of the existence of said note at the time I settled with said Wilson, and he gave it up to me.

Answer to question 5. So far as I can remember, I never did, either verbally or by letter, promise C. Samuel, in his lifetime, to pay said note, or express any regret at my inability to do it.

411 Answer to question 6. I have never had executions returned against me in Mississippi unsatisfied, though there are some cases against me in which such returns have been made.

Answer to question 7. The signature of R. Christmas on the note sued on is in the handwriting of H. Christmas, I think. I do not know whether that note is the only one he has put my name to. I have never sanctioned such acts by paying such paper.

Answer to question 8. I never knew of such a firm at New Orleans or elsewhere as Christmas and Brother at any time, and never had any interest in such concern, and never was interested concern or firm in New Orleans.

Answer to question 9. I have *examined* said questions without mental qualification or reservation, and according to my own knowledge; and all I have to say in relation to said question is, that in my answers above I have fully answered said questions; and further, that I did not

know that said note was given, or its purposes, until after it had been given, and then only from information. *That of C. Samuel I have stated that drawn from others had not been stated.* It is not believed evidence, and is not asked for by plaintiffs; but I have no information or belief contrary to what has been set forth in answers above.

412 Answer to question 10. I never promised plaintiff at any time to pay said note.

And further says not.

STATE OF MISSISSIPPI, *Issaquena County:*

The defendant Richard Christmas this day appeared before me, a justice of the peace, and ex-officio notary public of said county and State, and, being duly sworn, made oath that he believes the statements of the foregoing answer to be true.

R. CHRISTMAS.

Sworn to and subscribed by said R. Christmas before me this 21st day of January, A. D. 1865.

[SEAL.] WASH. B. FARR,
Justice of the Peace, and Ex-officio Notary Public.

And *and* at a court continued and held as aforesaid on the 23rd day of January, 1855, came the parties, by their attorneys, and on motion of the plaintiff, it is ordered that this case be continued at his costs until the next term of this court.

And at a court continued and held as aforesaid on the 4th day of June, 1855, came the parties, by their attorneys; *wherefore* to try the issue joined as to the defendant Richard Christmas, let a jury, to wit:

413 R. K. White, A. Borie, John F. Harris, J. Dillon, William Cotton, C. W. Field, W. C. Kennedy, Samuel Caswell, J. S. Kennedy, A. O. Smith, James J. Lemon, and Levin Cooper, who being elected, tried, and sworn, well and truly to try the issue as to the defendant Richard Christmas, and there not being sufficient time to go through with this case on this day, all further proceedings are laid over till to-morrow morning.

And at a court continued and held as aforesaid on the 5th day of June, 1855, came again the parties, by their attorneys, and the jury being empannelled and sworn, herein again appeared in the jury-box, and having heard the argument of counsel, upon oath returned into court the following verdict, to wit:

"We, the jury, find the issues for the defendant Christmas.

"J. DILLER, *Foreman.*"

It is therefore considered by the court that the defendant Richard Christmas recover of the plaintiff his costs herein expended, and may have ex'on.

And then the plaintiff tendered to the court his bill of exceptions herein, which being signed and sealed by the court, is ordere to be made a part of the record and proceedings herein.

414 The following are the bill of exceptions referred to in the above order, to wit:

J. W. RUSSELL, PLAINTIFF,
vs.
RICHARD CHRISTMAS, &C., DEFENDANTS.

Be it known that, on the trial of this case, the plaintiff read to the jury the deposition of N. D. Coleman, H. J. Todd, Samuel Steele, John A. Hotten, and the letter from the defendant Richard Christmas to Churchill Samuel, dated December 19th, 1859, [39]; and the answer of defendants to interrogatories filed by plaintiff. Here the plaintiff rested his case.

The defendant read the depositions of Elisha North, S. T. Whitehead, A. M. Young, B. S. Tappan, A. K. Smedes, B. W. Burney, Samuel Nelson, D. W. C. Bonham, and Duff Green. This was all the testimony introduced. Also read the statute of Mississippi, barring suit in six years on promissory notes.

The plaintiff then asked the court to instruct the jury; which instructions, marked 1, 2, 3, 4, and 5, are as follows, viz:

1st. The court instructs the jury that if they believe, from the evidence in this case, that Richard Christmas signed the note sued on, that he cannot succeed on the plea of non est factum.

2d. That should the jury find that the note sued on was not signed and executed by Richard Christmas in person, yet if they believe, from the evidence, that said note was signed with his sanction, or he
415 approved of the same after the execution thereof, his sanction and approval made the note his act and deed, and he cannot avail himself of the plea of non est factum.

3d. Should the jury believe from the evidence that the note sued on was not executed by defendant, and was not afterwards sanctioned by him, yet they should find for the plaintiff if they should further believe that the note sued on was given plaintiff, or his agent, Samuel, in liquidation and discharge of defendant's original acceptance of $600 due 1st January, 1840; and, in consequence of the delivery of said note, the plaintiff or his agents was induced to surrender said acceptance, believing at the time that the note sued on was a genuine note, and binding on all the parties whose · were signed thereto.

4th. The court further instructs the jury that the law *when* the contract is made is to determine the validity and interpretation of the contract; whilst the law where the suit is brought determines the form and extent of the remedy; and that the plea of the statute of limitations of the State of Mississippi cannot be relied on in this action as a bar to plaintiff's claim, and is no defence in the courts of Kentucky.

416 5th. The court further instructs the jury that if they believe from the evidence in this case that the plaintiff resided in Kentucky, and defendant was a non-resident of this State, and was not in the State at the time plaintiff's cause of action accrued, that the statute of limitations of this State did not commence running against plaintiff's claim until said defendant came within the limits of the State of Kentucky and the jurisdiction of this court; and that they cannot find against the plaintiff unless they believe that five years had elapsed from the time said defendant came into this State before the plaintiff commenced this action.

The court gave instructions No. 1 and 2, but refused to give the 3, 4, and 5, but overruled the same; to the ruling of the court in refusing to give the instructions 3, 4, and 5 the plaintiffs excepts, and prays that this his bill of exceptions be signed and enrolled as part of this record.

W. F. BULLOCK. [SEAL.]

The following are the interrogatories and depositions referred to in the foregoing bill of exceptions, to wit:

For N. D. Coleman and others.

1st. Please state all you know of the handwriting of the body and signatures of the note sued on.

417 2d. When was said note placed in your hands, and what conversations you had with said Richard Christmas about said note; and what, if any, offers or promises to settle and adjust the same, giving the conversations, if any, in full, and the times, as near as possible, and the offers and promises made, if any?

3rd. What has been the condition of said Christmas since the said note fell due down to the present time, and what *savering*, if any, is there to the holders of such paper, where the debtors are insolvent, by the Mississippi laws?

4th. Has said Christmas, or any one purporting to come from him, at any time since the note passed out of your hands, or shortly before, attempted to talk with you about the signatures to said note, or Christmas' acknowledgments and responsibilities in relation thereto, or promises to pay the same? If yea, state who, and give the conversations.

5th. State any other matter or thing you may know in the premises relative to the said note, or said Richard Christmas' liability therefor, or of his connection in business with W. A. Wilson and H. and T. H. Christmas.

BARRETT AND WOOD,
For Plaintiff.

418 Answer of N. D. Coleman to interrogatories propounded to him, to be read as evidence in a suit at law, now pending in the Jefferson circuit court, State of Kentucky, wherein John W. Russell is plaintiff, and W. A. Wilson, Richard Christmas, &c., are defendants.

In answer to 1st interrogatory: I have seen Mr. Christmas write his name but seldom; indeed, never to examine it critically. I have received letters on business from him, acknowledged to be his, and in that way have some knowledge of his handwriting. When I received the note, and until very recently, I suppose that the signature of R. Christmas to the note before me was genuine; indeed, I did not doubt; but upon a close inspection of that signature, and comparison with the signatures to his letters addressed to me, I find considerable difference. I do not profess to be sufficiently acquainted with R. Christmas' handwriting to say positively whether or not the signature is genuine. It has its general appearance, though the signature to the note is more stiff than his usual signature; and the *R* is not like his usual signature, and the *t* in Christmas is made and crossed differently from his usual mode of making and crossing the *t*. From my general knoledge of

419 handwriting I would say that the signature of R. Christmas, H. and T. H. Christmas, were made by the same person. I have no knowledge of the signatures of Wilson and H. and T. H. Christmas, nor in whose handwriting the body of the note.

In answer to 2d question: I do not recollect when *when* the note was placed in my hands; it was several years ago. Shortly after I had conversations with Mr. R. Christmas on the subject, but not having the note with me, I did not show it to him. However, he seemed to

understand all about it when I told the parties, and that it was given for the Rodolph, as I have been informed. He said he would not pay it; was not bound; that judgment could not be gotton on it by law; and, if it could, the money could not be made, and such remarks as clearly showed me that it was not his intention to pay the note. I do not pretend to give the precise language of Mr. Christmas, but I inferred that he did not consider himself bound on the paper, because he had received no benefit or consideration, or because he was insolvent, and did not choose to pay those old claims. I think in one conversation he said that he individually had nothing to do in the purchase of the boat. I had a more recent conversation with Mr. Christmas,
420 about the time the note was sent to Kentucky for suit, when he offered to pay a small sum—two or three hundred dollars—to compromise the case and get rid of trouble. I think it was in the conclusion of that conversation that he, for the first time, said that he had never signed the note himself, and that he had already put in a plea, or could put in a plea to that effect. He desired to see the note, but it was not in my possession. If I recollect right, I informed him that no such proposition as he made could be agreed to, and that the plaintiffs expected to recover, &c.; that I had received orders to return the note to be filed in the suit.

In answer to 3d interrogatory: I have for many years understood and believe that Mr. R. Christmas was insolvent; that is, that money could not be made out of him by the ordinary process of law. I knew of executions against him in the county where he resides, which were returned *no property*, although he lives upon and cultivates a large plantation. I believe it is notorious that money cannot be made by law, though I believe he pays his individual debts and liabilities, and his credit is now good for what he promises. I know of no saving of the statute of limitations in case of insolvency in this State.

421 In answer to the 4th interrogatory: Mr. A. M. Young once came to me and inquired about the note; asked to see it for the purpose of examining the signature. I do not recollect when it was, but I believe it was before I had heard Mr. Christmas had filed his plea of non est factum in the suit. Mr. Young asked me if I thought the signature of Christmas was genuine, to which I replied that I thought it was, but that I had not examined it critically, having never heard while the note was with me that its genuineness was questioned or *desired*. I do not recollect all the conversation with Mr. Young, but I think he said Christmas would like to compromise the case with a small sum; I do not recollect whether it was Mr. Young or Mr. Christmas himself who informed me that Christmas denied the signature, for, at that time, I had no doubt of, and had no ground to doubt its genuineness.

Answer to 5th interrogatory. I know of nothing that I can say further, except that in the first conversations I held with Mr. R. Christmas on the subject, he never suggested the fact that he had not signed the note nor authorized it to be done by an agent. I knew that Mr. Christmas was a member of the firm of Allen, Christmas & Co., though I
422 did not know who were the other members, except Mr. Allen; not having ever heard Mr. Christmas refuse payment on that ground, I was surprised when I learned what plea he had filed at Louisville. I do not recollect that Mr. Christmas saw the note while I held it, but I am satisfied he knew what note it was, and for what consideration it had been executed. I cannot state whether W. A. Wilson and

H. and T. H. Christmas were partners of R. Christmas, or members of the firm of Allen, Christmas & Co.

And further this deponent saith not.

N. D. COLEMAN.

Sworn to and subscribed before me this 24th day of March, 1854.

L. S. HOUGHTON, *Commissioner.*

Also the deposition of Harry J. Todd, taken at the office of the court of appeals, in Frankfort, on the 16th day of November, 1854, to be read as evidence for the plaintiff in the action pending in the Jefferson circuit court, in which John W. Russell is plaintiff and R. Christmas, &c., are defendants.

Deponent being of lawful age, and first sworn, deposes and says:

423 Question by plaintiff. State whether or not you were present when a conversation was had between Russell and Christmas, concerning a debt due by the latter to the former for the purchase of the steamboat Rodolph; and, if so, state the purport of the conversation, and when it took place.

Answer. In July, 1839, I was clerk of the Empress. Mr. Richard Christmas was a passenger on the boat from Vicksburg to Memphis, or the mouth of Cumberland River. On the trip Capt. J. W. Russell had a conversation with Mr. Christmas in regard to a balance due the owners of the steamer Rodolph by Mr. Christmas and others, in which Mr. Christmas stated that at the time he became responsible for the purchase-money of the Rodolph he did not expect to pay any portion of the debt; that he was much surprised when the notes or acceptances given for the boat were protested; that his own engagements were such that he could not then pay, but that he expected in a short time to make such arrangements as would enable him to pay the notes or acceptances for the Rodolph. This is the substance of what I heard Mr. Christmas say on the subject.

And further saith not.

H. J. TODD.

424 Also the deposition of Samuel Steele, taken on the 16th day of May, 1855, on the part of the plaintiff, deposeth as follows:

Question by the plaintiff. State what you know about the sale of the steamboat Rodolph, made by C. Samuel to R. Christmas; when and where was the sale made; how and in what manner was the boat to be paid for; to whom was she to be delivered, and when; who was the principals of the purchase, and who the sureties.

Answer. I was clerk of the steamboat Rodolph before her sale; and we laid her up at Cincinnati, Ohio, and shortly afterwards I was informed by C. Samuel, one of the owners, that she had been sold to defendant Christmas for $18,000. This, I think, was in the latter part of the summer of 1838. I think the sale was made in Frankfort, from the circumstance that I paid over to the owners in Frankfort the money the boat had made; and upon coming to Frankfort in a very short time afterwards, not more than a week, I was informed that she had been sold, and I had not known of Samuel's being absent from Frankfort during the interval. I cannot now state the time she was to be paid for, nor who were principals or sureties in the notes, nor to whom or where she was delivered.

By same. Did you or not settle with J. C. Buckles, of Louis-
425 ville, a claim he had against the boat, after she was laid up at Cincinnati, and before your settlement with the owners at Frankfort.

Ans. I settled all claims against the boat, so far as I knew, before my settlement with the owners, and so reported to the owners. I do not recollect particularly settling with Buckles; he was the agent of the boat at Louisville.

And further saith not.

SAM'L STEELE.

Also the deposition of John A. Holton, taken at the same time and for the same purpose, deposes and says:

In answer to question first, propounded to Sam'l Steele, he deposes and says: I was present at the residence of C. Samuel, in Frankfort, and was told by him, I think, in the presence of R. Christmas, that he had sold the steamboat Rodolph to Christmas, who was, I know, at Samuel's house at the time, and was, I think, present in the room. I do not know the price, or how or when she was to be paid for, nor who were principals or sureties in the purchase. I inferred from the circumstances that the sale was made in Frankfort, although I do not think the place where the sale was made was mentioned. This was, I think, in 1838 or 1839.

And further saith not.

JOHN A. HOLTON.

426 The following are the interrogatories and depositions referred to in the bill of exceptions, to wit:

Interrogatories propounded to witnesses on behalf of defendant Richard Christmas.

1st. Do you know the parties?

2d. Examine the note annexed, purporting to be signed W. A. Wilson, R. Christmas, and H. and T. H. Christmas, and say if you know the handwriting of Richard Christmas. If so, is or is not signature of Christmas to said note the signature of said Richard Christmas *or not?*

3rd. Where was Richard Christmas at or about the date of said note? Was he or not then in Vicksburg? State fully, and with particular circumstances of your means of knowing the dates, &c., all you know on that subject.

4th. Was or not the steamboat Rodolph, at the date of said note, the property of W. A. Wilson, and was or was not the note given for a debt of that boat, or of W. A. Wilson, for which R. Christmas became security?

5th. Where did Richard Christmas reside at the date of said note, and where has he resided from that time to the present?

6th. Has he or not ever since resided in the State of Mississippi?

7th. Are you or not a lawyer in Mississippi; and, if so, what
427 length of time by the laws of Mississippi barred a recovery on the note hereto annexed?

8th. State any other facts which you believe may be material for defendant.

BODLEY AND LOCKE,
For Christmas.

Cross-interrogatories.

1st. Will you please state in whose handwriting the signature of Richard Christmas is, and what connection or relation the writer *hand* had in business with said Richard Christmas?

2d. Do you or not know that Richard Christmas purchased the steamer Rodolph at Louisville, Kentucky, or at Cincinnatti, Ohio, long previous to the date of the note sued upon? If yea, please state whether he did or not pay for her, in whole or in part, by drafts or bills he drew on the house of Christmas, Allen & Co., of New Orleans?

3rd. Do you or not know that Richard Christmas, and H. and T. H. Christmas were members of that firm; if not, who did compose it?

4th. Do you or not know that when the bill or draft on said house or firm fell due, that it was taken up by the note sued upon, and the mortgage executed to secure the same at New Orleans, and that this last arrangement was made at New Orleans and not at Vicksburg?

5th. If you know the arrangement made, state it as it was.

428 What has become of W. A. Wilson, H. and T. H. Christmas, and Allen, and who composed the New Orleans firm in which Richard Christmas was a partner?

6th. Do you or not know that Wilson was placed in command of said steamer Rodolph by Richard Christmas, and that he held all the interest he did own or claim in said boat from said Richard Christmas, or his partners?

7th. What has been the condition of Richard Christmas as to property since 1840? Is he or not insolvent, and how long has he been so?

8th. What saving, if any, in the Mississippi law of limitation as to non-resident holders of bills, notes, &c., or where the parties owing them are insolvent?

9th. Does the Mississippi law attempt to make a limitation affecting contracts to be performed elsewhere than in that State?

10th. Do you or not know that Richard Christmas has acknowledged an ownership in the Rodolph, and was engaged in the carrying trade with her in southern waters?

11th. State all you know of Richard Christmas' connection in business with Wilson, and H. and T. H. Christmas, and all you may know of their signing notes or other papers for him, and his recognition thereof?

12th. Were you or not induced by said Richard Christmas to

429 call and see the note sued on in the hands of N. D. Coleman, of Vicksburg, and requested so to talk with said Coleman as to impress him with the belief that the signature was not said Christmas', and also that said Christmas had never admitted to said Coleman that he owed said debt?

13th. Please state any and all conversations you had with said Coleman, giving the dates of such conversations in relation to said note.

The deposition of Elisha North, taken on the 16th day of March, 1854, to be read as evidence on the part of defendant Richard Christmas, deposes and says:

Answer to interrogatory 1st. I have known Richard Christmas for the last twenty-five years.

Ans. to int. 2d. I have carefully examined the note referred to in said interrogatory. I am very familiar with the handwriting of said Christmas, having seen him write his name to all kinds of instruments for the last twenty years; his signature is marked one in the letters *R* and *t*.

From my knowledge of his signature and a careful examination of the note named above, purporting to be his, I am satisfied that said signature is not that of said Richard Christmas.

Ans. to int. 3d. I do not know.

430 Ans. to int. 4th. I do not know.

Ans. to int. 5th. He resided in Mississippi, and has continued to reside there.

Ans. to int. 6th. He has ever since resided in the State of Mississippi.

Ans. to int. 7th. I am not a lawyer, and do not know anything in answer to this question.

And further deponent saith not.

ELISHA NORTH.

Answer to cross-interrogatory 1st. I do not know.

Ans. to cross-int. 2d. I do not know anything about it.

Ans. to cross-int. 3rd. I know nothing about it.

Ans. to int. 4th. I know nothing about it.

Ans. to int. 5th. I know nothing at all about it.

Ans. to int. 6th. I know nothing about it.

Ans. to int. 7th. I cannot say whether he is insolvent or not.

Ans. to int. 8th. I do not know.

Ans. to int. 9th. I do not know.

Ans. to int. 10th. I do not.

Ans. to int. 11th. I know nothing about it.

Ans. to int. 12th. I was not, and did not.

Ans. to int. 13th. I never had any conversation with Coleman about said note.

And further deponent saith not.

ELISHA NORTH.

Sworn to and subscribed before me this 16th March, 1854.

L. S. HOUGHTON,
Commissioner.

431 The deposition of S. T. Whitehead, taken at the same time, on part of defendant R. Christmas.

Answer to interrogatory 1st. I have known Richard Christmas since the year 1840, say in January.

Ans. to int. 2d. I have carefully examined said note, and do not think it is.

Ans. to int. 3rd. Said Richard Christmas was in Hinds County, Mississippi, at the date of said note at Daniel Perkins'. He came there on the 7th day of March, 1840, and remained there five days. I am satisfied of this, from the fact that during that time I hunted day and night with said Christmas for deer; said Christmas having come to see said Perkins, who was sick at that time, and died shortly afterwards, and I made his coffin, and have referred to my books to refresh my memory, and be certain that I am right.

Ans. to int. 4th. I do not know.

Ans. to int. 5th. He resided on the Yazoo River, at the date of said note, in this State, and since 1841 has always resided on the Mississippi River, in this State, engaged in planting.

Ans. to int. 6th. He has.

And further deponent saith not.

S. T. WHITEHEAD.

Answer to cross-interrogatory 1st. I do not know.
Ans. to int. 2d. I do not know.
432 Ans. to int. 3rd. I do not know.
Ans. to int. 4th. I do not know.
Ans. to int. 5th. I do not know.
Ans. to int. 6th. I do not know.
Ans. to int. 7th. I do not know.
Ans. to int. 8th cross. I cannot tell.
Ans. to cross-int. 9th. I am no lawyer and do not know.
Ans. to cross-int. 10th. I do not know.
Ans. to cross-int. 11th. I know nothing about it.
Ans. to cross-int. 12th. I was not and did not.
Ans. to cross-int. 13th. I never had any conversation with said Coleman about said note.
And further deponent saith not.

S. T. WHITEHEAD.

Sworn to and subscribed before me this 16th day of March, 1854.

L. S. HOUGHTON,
Commissioner.

Also the deposition of A. M. Young, taken at the same time, on behalf of defendant.

Answer to interrogatory 1st. I have known Richard Christmas for the last twenty years.
Ans. to int. 2d. I am very familiar with the handwriting of Richard Christmas, having seen him write his name almost a thousand times to all kinds of instruments, and I have carefully examined the note referred to. From my knowledge of his signature, I am satisfied
433 that said signature is not the signature of said Richard Christmas.
Ans. to int. 3rd. I do not recollect where he was.
Ans. to int. 4th. I do not know anything about it.
Ans. to int. 5th. At the date of said note, said Richard Christmas resided on his plantation on the Yazoo River, in this State, as a planter, and since the year 1841 he has been living on his cotton plantation on the Mississippi River.
Ans. to int. 6th. He has.
Ans. to int. 7th. I am not a lawyer, and do not know.

Ans. to cross-int. 1st. I do not know.
Ans. to cross-int. 2d. I do not know.
Ans. to cross-int. 3rd. I do not know.
Ans. to cross-int. 4th. I do not know.
Ans. to cross-int. 5th. I do not remember anything about it, nor do I know that said firm existed.
Ans. to cross-int. 6th. I know nothing about it.
Ans. to cross-int. 7th. Said Christmas has always held a great deal of property ever since I knew him, and does at the present time.
Ans. to cross-int. 8th. I know nothing about it.
Ans. to cross-int. 9th. I do not know.
Ans. to cross-int. 10th. I do not, and never knew or heard of his being engaged in steamboating.
Ans. to cross-int. 11th. I know nothing about it.
434 Ans. to cross-int. 12th. Mr. Christmas requested me to call and see Mr. Coleman, and ask him if he had a note for collection

against said Christmas, and requested me to see the note, and ascertain whether the signature thereto was the genuine signature of said Christmas, as he, said Christmas, had never seen said note, and had heard that said Coleman had it for collection as an attorney. I accordingly called on Mr. Coleman, who stated to me that he had sent the note to Kentucky. I was not requested by said Christmas so to talk with said Coleman as to impress him with the belief that said Christmas had never admitted to said Coleman that he owed the debt. I merely called on said Coleman to ascertain whether the said signature to said note was that of said Christmas or not.

Ans. to cross-int. 13th. My recollection of my conversation with said Coleman about said note is this, that said Coleman said said note had been sent to Kentucky, as above stated. I asked him if he thought it was the signature of said Christmas. He said that he would not be willing to swear that it was. The whole conversation with said Coleman was in relation to said Christmas' signature to said note, and no effort whatever was made by me to induce said Coleman to be-
435 lieve that said signature was not said Christmas', or that said Christmas had never admitted to said Coleman that he owed said debt. I think that this, the only conversation I ever had with said Coleman on the subject, occurred in the month of November or December, 1853. From what Mr. Coleman stated to me at that time, I inferred that he had never presented or shown said note to said Richard Christmas.

And further this deponent saith not.

A. M. YOUNG.

Also the deposition of B. S. Tappan, taken at the same time, on the part of defendant Christmas, deposes and says:

In answer to interrogatory 1st. I have known Richard Christmas intimately over twenty years.

Ans. to int. 2d. I have examined carefully said note, and presume that there is no man more familiar with the signature of said Christmas than I am. I am satisfied that the signature to said note is not the genuine signature of said Richard Christmas.

Ans. to int. 3d. I do not know where he was at that time.

Ans. to int. 4th. I do not know.

Ans. to int. 5th. I came to the State of Mississippi in the year
436 1838; said Christmas was living here at that time, and has resided in said State ever since.

Ans. to int. 6th. He has.

Ans. to int. 7th. I am not a lawyer, and do not know.

Ans. to cross-int. 1st. I do not know.

Ans. to cross-int. 2d. I know nothing about it.

Ans. to cross-int. 3d. I do not know.

Ans. to cross-int. 4th. I do not know.

Ans. to cross-int. 5th. I do not know.

Ans. to cross-int. 6th. I do not know.

Ans. to cross-int. 7th. I do not know.

Ans. to cross-int. 8th. I do not know; I am no lawyer.

Ans. to cross-int. 9th. I don't know.

Ans. to cross-int. 10th. I do not not know, and never heard of his being ingaged in steamboating.

Ans. to cross-int. 11th. I knew nothing about it.

Ans. to cross-int. 12th. I did not, and was not.

Ans. to cross-int. 13th. I never had any conversation with said Coleman about said note.

Further the deponent saith not.

B. S. TAPPAN.

Also the deposition of Abraham K. Smedes, taken at the same time, on the part of the defendant Richard Christmas.

Ans. to interrogatory 1st. I have known Richard Christmas,
437 the *deponent*, since the year 1835 or 1836. I do not know the plaintiff.

Ans. to int. 2d. I have carefully examined the note referred to in said interrogatory. I am quite familiar with the handwriting of said Christmas, having seen him write his name many times to letters, deeds, and other instruments. His signature is uniform, and marked particularly in the letter "R." From my knowledge of his signature, and a careful comparison of the one—the note named above purporting to be his—I am satisfied that said signature is not that of said Richard Christmas.

Ans. to int. 3d. I do not know where said Christmas was at the date of said note.

Ans. to int. 4th. I know nothing in relation to said steamer Rodolph, or the consideration of said note.

Ans. to int. 5th. To the best of my knowledge, said Richard Christmas has been a resident of the State of Mississippi since 1836 or 1837.

Ans. to int. 6th. To the best of my knowledge, he has.

Ans. to int. 7th. I am a lawyer, residing and practising my profession in the State of Mississippi, at Vicksburg. The said note, under the laws of Mississippi, would be barred by our statute of limitations in six years after its maturity, and a recovery thereon would be barred in
438 that time. To sustain this opinion I refer to the code of Mississippi, by A. Hutchinson, chapter 57, article 1, page 828, "An act for the limitation of actions and certain proceedings in civil actions, and to prevent frivolous and vexatious suits," passed June 7, 1822. The fourth section of that act was in force until the year 1844, and under it the recovery on said note would be completely barred in the time above named. On the 24th of February, 1844, (see same book, same chapter, article 6, page 829,) "An act to amend the several acts of limitations" was passed. By the fourth section of that act (see page 830) actions on promissory notes and bills of exchange shall be commenced and prosecuted within six years after the right of action shall have accrued. This act went into force from and after its passage. Whether the act of June 7th, 1822, fixed the limitation as above stated or not, unless said note was sued on within six years after the 24th day of February, 1844, the right to recover thereon would be completely barred, unless said Christmas promised in writing to pay the same, and signed said written promise, or it be proved that the very claim sued on was presented to him, and acknowledged to be due and unpaid.

See same act, sect. 16, page 832. That the legislature may pass
439 an act of limitations which shall apply to causes of action existing before its passage, and at the time thereof, allowing reasonable time in which suits may be brought, and without cutting off all remedy thereon, I refer to the case of the West Feliciana Railroad Company against Stockett, reported in 13 Smedes and Marshall's Reports, page 395.

Answer to cross-interrogatory 1st. I do not know.
Ans. to cross-int. 2d. I do not know.
Ans. to cross-int. 3d. I do not know.
Ans. to cross-int. 4th. I do not know.
Ans. to cross-int. 5th. I do not know.
Ans. to cross-int. 6th. I do not know.
Ans. to cross-int. 7th. I cannot say whether be is insolvent or not.
Ans. to cross-int. 8th. There is no saving in the Mississippi statute of limitations as to non-resident holders of bills, notes, &c., and none where the parties owing them are insolvent.
Ans. to int. 9th. The Mississippi law does not attempt make a limitation affecting contracts to be performed elsewhere in that State.
Ans. to int. 10th. I know nothing about it.
Ans. to int. 11th. I know nothing about it.
Ans. to int. 12th. I know nothing about it.
Ans. to int. 13th. I never had any conversation with said Cole-
440 man about said note.
And further deponent saith not.

A. K. SMEDES.

Also the deposition of R. W. Burney, taken on the 18th day of March, 1854, to be read on behalf of defendant R. Christmas, to wit:

Answer to interrogatory 1st. I know Richard Christmas and Wilson, and have known said Christmas intimately for fifteen or twenty years.
Ans. to int. 2d. I know the handwriting of Richard Christmas, and do not think that the signature to the note is the signature of Richard Christmas. I am very familiar with the handwriting of Richard Christmas, and have been for the last fifteen years.
Ans. to int. 3rd. I do not know.
Ans. to int. 4th. I do not know.
Ans. to int. 5th. At the date of said note said Christmas resided on his plantation, on the Yazoo River, in this State; and he has resided from that time to the present in Mississippi.
Ans. to int. 6th. He has.
Ans. to int. 7th. I am not a lawyer, and do not know.

Ans. to cross-int. 1st. I do not know.
Ans. to cross-int. 2d. I do not know.
Ant. to cross-int. 3d. I do not know any such firm.
Ans. to cross-int. 4th. I know nothing about it.
441 Ans. to int. 5th, cross. I know nothing of the arrangement. I have understood that W. A. Wilson is dead, and that H. Christmas is dead. T. H. Christmas resides, I believe, in Bolivar County, Mississippi. As to Allen, I do not know. I do not know that Richard Christmas ever was a partner of any firm in New Orleans.
Ans. to int. 6th. I know that said Wilson was captain of the boat, but do not know who placed him there.
Ans. to int. 7th. Said Richard Christmas was in possession of a good deal of property at that time, and has been since; but whether he is insolvent or not, I do not know.
Ans. to int. 8th. I do not know.
Ans. to int. 9th. I do not know.
Ans. to int. 10th. I do not know that he has or was, and never knew him to be engaged in steamboating.
Ans. to int. 11th. I know nothing about it.

Ans. to int. 12th. I was not, and did not, and never saw said note before to-day.

Ans. to int. 13th. I was present at Vicksburg some time in the winter of 1853, and heard a conversation between Richard Christmas and Nicholas D. Coleman, respecting a note he, Coleman, as attorney, held against said Christmas as surety for W. A. Wilson. Christ-
442 mas requested to see the note, and stated that he was sued on it in Kentucky. But the note was not filed with that suit; that he had plead non est factum; also, the statute of limitations to said suit, believing he had never signed said note. But to get rid of the expense of a trouble of a lawsuit, he would give said Coleman two hundred and fifty dollars to be released from said lawsuit or note, said Christmas believing that he was not bound thereon; said Christmas stating at the time that the proposition was not to be construed as an acknowledgement of any liability on account of said note, or any waiver at law of his remedy against the same. Mr. Coleman remarked that he had sent the note to Kentucky, and was sorry he, Christmas, had not seen it before he sent it, as he, Coleman, had no authority to compromise the matter, even if he had then the note. This is my best recollection of said conversation as it then occurred.

And further deponent saith not.

R. W. BURNEY.

Also the deposition of Samuel Nelson, taken on the 22d day of March, 1854, on behalf of defendant Richard Christmas.

Answer to interrogatory 1st. I have known Richard Christ-
443 mas since the year 1838, and intimately since 1842, but do not know the other parties.

Ans. to int. 2d. I have carefully examined the note referred to, and from my knowledge of his signature, having had frequent correspondence with said Richard Christmas for the last twelve years, I do not think the signature to said note the signature of Richard Christmas.

Ans. to int. 3rd. I know nothing of the whereabouts of Richard Christmas at that date.

Ans. to int. 4th. I do not know.

Ans. to int. 5th. I cannot speak positively as regards the *evidence* of said Richard Christmas at that time, although I was personally acquainted with him. I know that he resided on the Yazoo River in 1841, and removed to the Mississippi River in 1842, where he has resided ever since.

Ans. to int. 6th. He has.

Ans. to int. 7th. I am no lawyer, and know nothing on that subject.

Ans. to int. 8th. I know no other facts that I deem material to the case.

Ans. to cross-int. 1st. I do not know.

Ans. to cross-int. 2d. I know nothing about it.

Ans. to cross-int. 3d. I am not aware of the existence of any such firm.

444 Ans. to cross-int. 4th. I do not know anything about it.

Ans. to cross-int. 5th. I do not know.

Ans. to cross-int. 6th. I know nothing about it.

Ans. to cross-int. 7th. I know nothing of his solvency or insolvency. He is and has been in possession of a large amount of property in my neighborhood.

Ans. to cross-int. 8th. I know nothing about it.

Ans. to cross-int. 9th. I do not know.
Ans. to cross-int. 10th. I do not know.
Ans. to cross-int. 11th. I know nothing about it.
Ans. to cross-int. 12th. I know nothing about it.
Ans. to cross-int. 13th. I never had any conversations with said Coleman in relation to said note.
And further this deponent saith not.

SAMUEL NELSON.

Also the deposition of D. W. C. Bonham, taken on 22d March, 1854, to be read on behalf of defendants.

Answer to interrogatory 1st. I knew Richard Christmas, and none of the other parties to this suit. I have known him since forty-two, and intimately since forty-five, with frequent business correspondence and transactions, which would make me familiar with his signature.

Int. 2. On a careful examination of the note referred to, I have
445 no hesitation on saying that, from my knowledge of his signature, I do not believe it is his.

Int. 3rd. I know nothing of Richard Christmas at that date, as our acquaintance dates from forty two or three.
Int. 4th. I know nothing in answer to this.
Int. 5th. I cannot speak as to his residence at that time; since on the Yazoo and Mississippi Rivers.
Int. 6th. He has since I have known him.
Int. 7th. I am a lawyer in Mississippi, but have not practiced for years, and am not conversant with the statute of limitations.
Int. 8th. I know no other facts material.

Answer to cross-interrogatory 1st. I do not know.
Cross-int. 2d. I know nothing relative to the transaction.
Cross-int. 3d. I know nothing of the existence of such a firm.
Cross-int. 4th. I do not.
Cross-int. 5th. I know nothing relative to this question.
Cross-int. 6th. I know nothing about the matter.
Cross-int. 7th. I know not as to his solvency or insolvency. He is in possession of a large amount of property in my neighborhood.
Cross-int. 8th. I do not know.
Cross-int. 9th. I do not know.
Cross-int. 10th. I do not.
446 Cross-int. 11th. I know nothing in answer to this.
Cross-int. 12th. I was not; never having heard of the note, or the suit, until to-day, when requested to make the deposition.
Cross-int. 13th. I have never had any to the matter.
And further saith not.

D. W. C. BONHAM.

Also the deposition of Duff Green, taken on the 4th day of April, 1854, on part of defendants.

Answer to interrogatory 1st. I know Richard Christmas, and have known him since 1850. I was clerk for William P. Swiney, with whom said Christmas transacted business up to the time of the death of said Swiney, since which time he has done business with me.
Ans. to int. 2d. I have carefully examined the note annexed, and having frequently seen the signature of Richard Christmas to bonds, mort-

gages, deeds of trust, and letters, I think the signature of R. Christmas to said note is not in the handwriting of Richard Christmas.

Ans. to int. 3d. I know nothing about it.

Ans. to int. 4th. I know nothing about it.

Ans. to int. 5th. Said Richard Christmas has resided on his plantation, on the Mississippi River, above Vicksburg, since my first acquaintance with him.

447 Ans. to int. 6th. All I know in answer to this is contained in my answer to interrogatory 5th.

Ans. to int. 7th. I am not a lawyer, and do not know.

Ans. to int. 8th. I know of no other facts.

Ans to cross-interrogatory 1st. I do not know in whose handwriting the signature of R. Christmas to said note is *in*. I do not know what connection in business said party had who signed said note.

Ans. to cross-int. 2d. I know nothing about it.

Ans. to cross-int. 3d. I know nothing about it.

Ans. to cross-int. 4th. I know nothing about it.

Ans. to cross-int. 5th. W. A. Wilson, I think, resides in New Orleans; T. H. Christmas resides in Bolivar County, Mississippi; but I do not know that they were ever connected in business with Richard Christmas.

Ans. to cross-int. 6th. I know nothing about it.

Ans. to cross-int. 7th. I do not know whether Richard Christmas is insolvent or not. In all the transactions of his with which I have been familiar he has always been punctual.

Ans. to cross-int. 8th. I know nothing about it.

Ans. to cross-int. 9th. I know nothing about it.

Ans. to cross-int. 10th. I know nothing about it.

Ans. to cross-int. 11th. I know nothing about it.

Ans. to cross-int. 12th. I was not, and did not.

Ans. to cross int. 13th. I never had any conversation with said
448 Coleman in relation to said note.

DUFF GREEN.

And at a court continued and held as aforesaid, on the 6th day of June, 1855, came the plaintiff by his attorney, and moved the court for a new trial herein upon the following grounds assigned and filed by him, to wit:

1st. Because the court erred in refusing to give the jury instructions Nos. 3, 4, and 5, as asked for by the plaintiff.

2d. Because the verdict is contrary to the evidence and the law.

BARRETT AND WOOD,
Attorneys for the Plaintiff.

And said motion is laid over to some future day of the term for hearing.

And at a court continued and held as aforesaid, on the 18th June, 1855, came the parties by their attorneys, and the motion for a new trial herein being argued, and the court being advised, orders that said motion for a new trial be overruled, to which plaintiff excepted.

And at a court continued and held as aforesaid, on the 7th November, 1856, came the plaintiff by his attorney, and filed the opinion

of honorable the court of appeals, the mandatory part whereof is as follows:

"It is therefore considered that said judgment be reversed, and cause remanded for a new trial, and other proceedings conformable hereto, which is ordered to be certified to said court."

A copy. Teste:

J. SWIGERT, *C. C. A.*

It is therefore ordered that a new trial be granted the plaintiff.

And at a court continued, &c., on the 7th November, 1857, came the parties by their attorneys, and then came the plaintiff, Thomas N. Lindsay, and moved the court to grant him a continuance herein until the next term of this court, upon affidavit filed; and on motion all further proceedings are continued.

The following is the affidavit referred to, to wit:

Thomas N. Lindsey states that the plaintiff *are* not ready for trial. The plaintiff *have* been diligently seeking to find some of the officers and crew of steamer Rodolph at the time she was attached by plaintiffs at New Orleans. As shown by the record filed with defendants' answer, most of them are dead. Recently the affiant, through a correspondent with his brother, L. Lindsay, who resides at Vicksburg, learned that a man by the name of Kelly, who is running on a boat from Vicksburg up the Yazoo, was the carpenter of the Rodolph when she was attached, and would prove that said boat was largely indebted to her officers and crew, and that it took the full amount of the sale money to pay costs, her officers, and crew, whose claims had preference over the claim of plaintiff, on which the attachment issued. Said Kelly will also prove that said Richard Christmas was frequently on the steamboat, shortly before she was attached, acting as an owner, helping himself to money out of the drawer, and doing other acts as one interested in said boat, and that said Kelly's statements will be true. He further states that he sent interrogatories to be crossed by the counsel of Christmas, in consequence of the shortness of time, and uncertainty of obtaining the deposition of Kelly, after he learned where Kelly was, but was advised by W. F. Barrett, esqr., that the counsel for Christmas would not consent to cross-interrogatories, and in consequence he sent a notice, served to take the deposition, at Vicksburg, but said deposition has not been returned, and he fears has not been taken, from the shortness of the time. He is also advised by the brother of W. F. Barrett, who is the only counsel for plaintiff, that said Barrett is not able to attend to business, owing to his indisposition, and may not be able to so at this term.

Affiant does not ask continuance for delay, but to have fair trial. He knows no one but Kelly by whom he can prove the facts stated, which he is advised are material to the plaintiff's cause. He states further that he came to Louisville to attend to the case with Mr. Barrett, but is constrained to return home this afternoon, to get to Owen circuit court, which commences Monday next, and it would be very inconvenient to be here on next week, he being counsel in several cases there set early in the week. He states further that he knows the plaintiffs have been relying on Mr. Barrett's attending to said case, and believes they are not aware of his indisposition, which affiant was not advised of until he arrived here. He has not been able to find any other of the crew but Kelly.

TH. N. LINDSAY.

Sworn to, &c., November 7th, 1857.

In court, 9th Nov., 1857, came the parties by, &c., and the defendant Richard Christmas, on his motion, the 2nd *parab* of his answer is stricken out. Wherefore, to try the issue joined, let a jury come.

452 And thereupon came a jury, to wit: Jesse Bayles, and Richard Taylor, W'm Hardin, Jno. M. Winter, J. G. Dodge, A. D. Mansfield, James L. Brown, Charles Woolford, Jno. Newkird, R. Burge, Hugh Curry, George W. McKinney, who being, &c.; and there not being sufficient time to finish this case on to-day, all further proceedings are continued until to-morrow.

And on the 11th November, 1857, came, &c., and the jury impannelled and sworn herein again appeared in the jury-box, and, having heard the evidence and argument of counsel, upon oath returned into court the following verdict, to wit:

"We, the jury, find for the plaintiff $5,634 13, with interest from March 1, 1841.

"R'D H. TAYLOR, *Foreman.*"

It is therefore considered by the court that the plaintiffs recover of the defendant R'd Christmas the sum of $5,634 13, with interest thereon, at the rate of 6 per ct. per annum, from the 1st day of March, 1841, until paid, and also his costs herein expended, and may have ex'on, &c.

And on the 12th November, 1857, came the defendant R'd Christmas, and moved the court to set aside the judgment herein, and grant him a new trial upon the following grounds, in writing filed, and supported by the written affidavit of W. S. Bodley, attorney for defendant, also filed, to wit:

453 1st. The verdict is against law and evidence.

2d. The defendant was surprised by the evidence of Mrs. Wales.

3rd. The verdict is for an excessive sum, and because there is error in the assessment of the amount of recovery.

W. S. BODLEY, *P. D.*

And said motion is laid over to some future day of the term for hearing.

Bill of exceptions.

And on the 27th February, 1858, came again the parties by their attorneys, and the motion for a new trial herein being argued, and the court being advised, ordered that said motion for a new trial be overruled; and then the defendant Christmas prayed an appeal from the judgment rendered herein to the honl. the court of appeals, which is granted him; and also filed his bill of exceptions herein, which, being signed and sealed by the court, is ordered to be made part of the record and proceedings herein.

Bill of exceptions.

Be it remembered that, on the trial of this action, the plaintiff read in evidence the answer of defendant Christmas to amend petition and interrogatories.

Also the deposition of N. D. Coleman, H. J. Todd, S. Steele, and Jno. A. Holton.

454 And then introduced Mrs. Wales, who, being sworn, testified—

That she was the wife of W'm A. Wilson, commander of the st'r Rodolph; in January, 1840, she went to join her husband. After arriving on the boat at New Orleans, the defendant R'd Christmas came into the ladies' cabin with said Wilson, and urged him to take, in his (Wilson's) name, the ownership of said steamboat Rodolph, and hold her for said Christmas and said Christmas' benefit; the reason given was that the boat would otherwise be attached. Said Wilson objected, and said Christmas told him he would save him harmless, and would increase his wages as captain to $150, and then to $200 a month; his wages were then $125 a month. That she was writing at the table and distinctly heard the conversation, and none but those three persons were present, except that the chambermaid may have been near. Christmas and Wilson then went forward towards the clerk's room, and exchanged some papers. Until that time she had supposed her husband owned the boat. She married him in the spring of 1839; he had no property and was dependant upon his wages. The conversation between Christmas and Wilson was in the latter part of January, 1840. Witness well

455 remembered the date, because she left Louisville in December, 1839, to join her husband, and had been detained in the ice. The conversation occurred just after she got to New Orleans, and when she had seated herself to write her first letter to her mother. The conversation itself and the manner and concern of her husband made a deep impression on her. He said that the thing looked deceitful and hypocritical, and he did not want to have anything to do with it; he was cautious about going in debt. She could not remember how long she remained on the boat, but she well remembered that the boat was attached "Mardi Gras" day, (Shrove Tuesday,) when she left and came up the river on another boat. Wilson did take the boat in his own name, though he was not the owner of her or any part of her. Before the conversation between R. Christmas and Wilson, she did not know Christmas, but is certain it was he, because she afterwards saw him on the boat (Rodolph) at New Orleans, Vicksburg, and Natchez, and he went on the boat and received money in the same way as the owner of the boat would do, and acted as owner.

After this evidence was given, the defendant's counsel asked for a continuance, stating, as on oath, (which was dispensed with by

456 the opposite counsel,) that he was totally surprised by the testimony of Mrs. Wales; had no idea she would be introduced, or such statements made; that he was instructed as to this matter by his client, who was in Mississippi, but believed he could disprove or impair the testimony of said witness, and would do so if a continuance were granted. Said motion was overruled by the court, to which the counsel for defendant excepted at the time, and now excepts, reserving the right to have his further exceptions embodied and signed hereafter; and this is certified as a bill of exceptions accordingly.

W. F. BULLOCK.

Affidavit of Bodley, referred to.

RUSSELL *vs.* CHRISTMAS. } Jefferson circuit court.

W'm S. Bodley states on oath that he was defendant's counsel on the trial and from the commencement of the suit, and was surprised by the

testimony of Mrs. Wales. He had never heard of such testimony or statements, and the witness was not mentioned or known by him to have been summoned or relied on as a witness until she was present at the trial. He believes that her evidence can be counteracted or impaired. It was important. The defendant was absent, and
457 still is in Mississippi, as affiant believes.

Sworn to, &c., by—

WM S. RODLEY.

Nov. 12, 1857.

And on the 24th Nov., 1857, came the defendant, R'd Christmas, and filed his affidavit herein appertaining to the motion for a new trial now pending in this cause.

Affidavit of Richard Christmas.

RUSSELL
vs. } Jefferson circuit court.
CHRISTMAS.

The defendant, R. Christmas, states on oath that at the time of the trial (November, 1857) he was at his residence in the State of Mississippi, where, on the 5th inst.. he received the first information of the trial, and a request from his counsel to come up immediately. In a few hours he started for Louisville, and arrived here on the 20th inst. Before his arrival he did not know, nor was he advised, that it was necessary to procure affidavits, nor what to prove, nor what had been deposed to on the trial, nor had he time to get the affidavits. Since his arrival he has learned that a Mrs. Wales testified, at the trial, to a conversation in January, 1840, at New Orleans, on the steamboat Rodolph,
458 between this affiant and William A. Wilson, captain of said boat, and the husband (now deceased) of said witness, to the effect that affiant urged said Wilson to take the ownership of said boat in his (said Wilson's) name, and hold her for affiant's benefit; and that, on Wilson's objecting, affiant offered to save him from loss, and to increase his wages as captain.

This affiant states positively that no such *consideration*, or anything like it, ever took place, there or elsewhere, at any time; that Wilson really bought the boat for himself, and not for affiant; was never asked to buy it for affiant; *was never asked to buy it for affiant;* but was indebted, at the time of his death, to affiant for a part of the price.

Affiant further states that he was not in New Orleans, nor near it, at the time of the alleged *consideration*, nor within a month before or after said time; and that affiant can establish this statement by the testimony of persons who well knew his residence and movements about the time referred to. Amongst them he knows the following: Alfred M. Young, of Madison Parish, Louisiana; Thomas H. Christmas, of Bolivar County, Mississippi; Margaret Allen and Mary Allen, of New Orleans; also, Alexander Allen, of Point Coupe Parish, Louisiana; A. Burwell
459 and A. K. Smedes, of Vicksburg, Mississippi; and B. D. Smith and Harriet Smith, of Williamson County, Tennessee, by several of whom he can prove the above statements.

This affiant, for the reasons above stated, cannot now produce their affidavits, but expects to procure them and file them by the next term of the court, if it be allowed him.

This affiant further states that he was in the habit of writing letters and orders, some of which have been preserved by the persons addressed,

and will be produced and filed at the next term, and will show that during all the time referred to by the witness this affiant was not in or near New Orleans. The same fact will also be shown by the testimony of said Allens and Smiths, to the fact that he was, at the time of the alleged conversation, engaged earnestly for several weeks or months in negotiating a large trade, and the exact time of consummating it will be fixed by reference to a mortgage from W. B. Norfleet and affiant to H. and T. H. Christmas, and will refresh the memory of witnesses so as to enable them to speak positively of his being in the counties of Madison, where the trade was made, and in and near the county of Warren, where he resided during all the time referred in said pre-
460 tended conversation. Said mortgage was made early in 1840, and is recorded in said county of Madison.

This affiant states that he expects to obtain said letters, orders, copies of the mortgage, and other documents, and evidence of other witnesses to the fact that he was not at New Orleans, or near it, at or about the time testified to by the witnesses, and exhibit to the court, at the next term, abundant evidence, documentary and by affidavit, to establish his statements. So far as affiant knows or believes, there is no person nearer than Tennessee who can prove the same fact, and neither the affidavit nor written evidence can be now produced. For that purpose he asks a continuance of the motion he has made for a new trial.

This affidavit is not made for delay, but to obtain justice and a fair trial. He further states that he was and is surprised at the testimony of said witness Wales. He had no reason to suspect that she would be a witness on the trial, nor that she would testify as she did. Her testimony was absolutely false, and, he is informed and believes, was greatly prejudicial to his defence. He expects to succeed in his defence
461 herein, if she should so testify again. This affiant expects to discredit entirely the testimony of said witness Wales.

R. CHRISTMAS.

Sworn to, &c., 23rd November, 1857, before—

H. C. PURDELL,
N. P. J. C., Ky.

The following are the exhibits referred to in the amended bill of exceptions, (on the 155 page :)

State of Louisiana, 4th district court of New Orleans, late commercial court.

TRANSCRIPT OF RECORD.

Affidavit.—Filed 24th February, 1841.

Personally appeared William T. McCormick, who, being sworn, says: W. A. Wilson, owner of steamboat Rodolph, is justly indebted to him in the sum of $855 94, exclusive of interest, and which is now due for services as mate on board said steamer Rodolph, and that the said W. A. Wilson resides permanently out of the State of Louisiana. He therefore asks an attachment against the steamer Rodolph, the property of said Wilson.

(Signed) W'M T. McCORMICK.

Sworn to and subscribed before me this 24th February, 1841.

(Signed) PE. DEVERGES,
Deputy Clerk.

Order.

462 Let an attachment issue as within prayed for, on affiant's giving bond, with T. B. Smith as security, in the sum of $1,500, conditioned as the law directs.

New Orleans, 24 February, 1841.

(Signed) PE. DEVERGES, *D. C.*

Bond.

Know all men by these presents that we, William T. McCormick and T. B. Smith, of the city of New Orleans, and State of Louisiana, are held *held* and firmly bound unto W. A. Wilson in the sum of $1,500, lawful money of the United States of America, to be paid to the said W. A. Wilson, his heirs, executors, administrators, and assigns; for the payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 24th February, A. D. 1841.

Whereas William T. McCormick has this day presented an affidavit to the honorable the commercial court of New Orleans, praying an attachment against the property of W. A. Wilson:

Now, the condition of the above obligation is such, that we, the above-bound William T. McCormick and T. B. Smith, will well and truly pay to the said W. A. Wilson, the defendants in said attachment, all
463 such damages as he may recover against us, in case it shall be decided that the attachment was wrongfully obtained.

(Signed) W'M T. McCORMICK. [L. S.]

(Signed) T. B. SMITH.

Attachment.

Commercial court of New Orleans, Louisiana.

To the sheriff of the parish of Orleans, greeting:

Whereas due proof has been made before the commercial court of New Orleans, by William T. McCormick, that W. A. Wilson is indebted to him in the sum of $855 94, and that the said Wilson resides permanently out of the State of Louisiana:

Now, therefore, you are commanded, in the name of the State of Louisiana and of the commercial court of New Orleans, to seize and attach according to law, and take into your possession, the goods and chattels, lands and tenements, rights and moneys, and effects and credits of the said Wilson, if any you find in the said parish, to the amount of what will suffice to discharge the said debt and costs of suit, and that you give notice of this proceeding by leaving a copy thereof in the French and English languages, at the last place of abode of the said defendant, if in said parish, and causing a true copy thereof to
464 be affixed at the door of the parish church of said parish, and make return of this writ, and indorse thereon the manner in which you have executed it, before our court, on or before the 4th Monday in March, A. D. 1841.

Clerk's office, 24th February, 1841.

(Signed) PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 24th February, 1841. Seized the steamboat Rodolph, her furniture, machinery, &c.; and the defendant herein stated residing out of the State of Louisiana, I posted citation and attachment to the door of the church of St. Louis of Orleans, in New Orleans, and to that of the room in which this honorable court is held, and executed this writ in all things as the law directs. No other property found. Returned 4th March, 1841.

(Signed) M. CRUZOT,
Deputy Sheriff.

Petition.—Filed 25th February, 1841.

To the Hon. Charles Watts, the judge of the commercial court of New Orleans:

The petition of W'm T. McCormick, who resides in New Orleans, respectfully shows that W. A. Wilson, owner of steamboat Rodolph, a boat engaged in carrying personal property for hire, who resides
465 in Mississippi, is justly and truly indebted unto petitioner in the full sum of $855 94 for services as mate, at the rate of $100 per month, on board the steamboat Rodolph, and interest, at the rate of five per cent. per annum, on $617, from November 27th, 1840, and on $238 92 from the 22d February, 1841, for this, to wit, that petitioner is holder and owner of two certain promissory notes, one for the sum of $617, the other for the sum of $238 92, each drawn by Charles B. Shain, clerk of said steamboat, and thereunto duly authorized by the said W. A. Wilson, in which he acknowledges that the amounts set forth are due your petitioner for services as mate on board said boat; the first dated at New Orleans on the 27th day of November, 1840, due on that day; the second dated at New Orleans on the 22d day of February, 1841, due on that day and year. Petitioner avers that he has a privilege on the said Rodolph for the amount due him for his services as aforesaid, all which will more fully appear by reference to the said notes, which are hereunto annexed for reference and made part of petition. Petitioner further alleges that said W. A. Wilson, although thereunto amicably requested, refuses to pay the amount for which he is indebted as aforesaid.
466 Petitioner shows that an order of attachment has already issued upon affidavit filed. Petitioner therefore prays that said W. A. Wilson be cited to appear and answer this petition, and that after due proceedings he be condemned to pay the petitioner the aforesaid sum of $855 94, with interest as aforesaid from the date aforesaid, and costs of suit. And petitioner asks for all general and equitable relief, and that the steamboat Rodolph be sold, and petitioner paid by privilege out of the proceeds thereof.

(Signed) C. M. JONES,
For Petitioner.

Note annexed to petition.

$617 02. Due W'm T. McCormick $617 02 for services as mate.
New Orleans, November 27th, 1840.

(Signed) CHA'S B. SHAIN,
Clerk for Steamboat Rodolph and owner.

$238 92. Due W'm T. McCormick $238 92 for services as mate, up to this date.
New Orleans, February 22d, 1841.

(Signed) CHA'S B. SHAIN,
Clerk for Steamboat Rodolph and owner.

467 *Citation.*

STATE OF LOUISIANA,
Commercial Court of New Orleans:

Mr. W. A. Wilson, residing in Mississippi:

You are hereby summoned to comply with the demand contained in the petition of which a copy acompany this citation, or deliver your answer to the same in the office of the commercial court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Hon. Cha's Watts, judge of the said court, 25th February, in the year of our Lord 1841.

(Signed) PE. DEVERGES,
Deputy Clerk.

The following is the return of the sheriff upon the citation which issued, viz:

Received 25th February, 1841, and on the 26th served petition and citation on W. A. Wilson in person; returned 26th February, 1841.

(Signed) COUZET, *Deputy Sheriff.*

Intervention of Trimbell & Co.

McCORMICK
vs.
WILSON.

468 To the hon. the judge of commercial court of New Orleans:

The intervention of John Tribell & Co., residing in New Orleans, shows that by virtue of a writ of attachment, issued in above suit, the steamboat Rodolph has been seized.

Your petitioners show that they *haved lien* privilege on the S. B Rodolph for work and labor done and material furnished, amounting to $35, as appears by annexed accounts.

They therefore pray that McCormick, plaintiff, and W. A. Wilson may be cited to appear and answer this petition; and, after due proceedings, that Wilson be condemned to pay petitioners $35 and costs; that the S. B. be sold, and your petitioner paid, by preference and privilege, from *proceed* of same, and for general relief, &c.

(Signed) F. HAYNE,
By his Attorney.

Account.

NEW ORLEANS, *February 26th*, 1841.

STEAMER RODOLPH AND OWNERS, DR.,
JOHN TRIBELL & CO., CR.

Jan'y 23.	Piecing steampipe and caseing on each end	$28 00
" " "	pipe for heater	1 50
" "	Repairing connecting pipe for joint in steam pipe	1 00
Feb'y 5.	Washing joint or supply pipe	2 00
469 " 23.	Glazing lamp and extra glasses	2 50
	Received payment	$35 00

The following is the sheriff's return of citation which issued to W. A. Wilson:

Rec'd March 8, '41, and on the 11th inst. served copy of petition of intervention on defendant in person; returned 11th March, 1841.

(Signed) L. A. DUCROS,
Deputy Sheriff.

Intervention of T. B. Winston.

To the honorable the judge of the commercial court of New Orleans:

The petition of Thomas B. Winston, who resides in New Orleans, respectfully shows that the steamer Rodolph, and W. A. Wilson, owner, are justly indebted to him in the sum of $300 41, with interest, for supplies, &c., furnished said boat within 60 days previous to the 23rd February, 1841, for the payment of which they aver they have a privilege upon said boat. The amount of their claim and its nature more fully appears by reference to their account, annexed.

Petitioner avers that William T. McCormick has attached in this honorable court the said steamer, in the suit of William T. McCormick vs. W. A. Wilson, claiming a privilege on said boat for the amount
470 of his wages as mate. Wherefore, and by reason of premises, petitioner asks to be allowed to intervene in said suit; that both William T. McCormick and W. A. Wilson be served with a copy of this his petition of intervention; and that, after due proceedings had, he have judgment against said Wilson, with privilege on said steamer Rodolph for the amount of his claim, $300 41, with interest, costs, general relief, &c.

(Signed) C. M. JONES,
For T. B. Winston.

Account annexed to petition of intervention.

NEW ORLEANS, *Feb.* 24, 1841.

Owners of steamer Rodolph bought of Tho. B. Winston:

1840.				
Nov. 1.	To bill stores rendered		$113 12	
" 12.	" " " "		50 19	
" 27.	" " " "		90 96	
" "	" " " "	A. W. Wilson	39 35	
				$293 56
	CR.			
Dec. 10.	By cash		100 00	
" 24.	" "		100 00	
				200 00
				93 62
	DR.			
Dec. 8.	To bill stores rendered		113 50	
	CR.			
1841.				
June 6.	By cash		100 00	
				13 50
471	DR.			
Dec. 23.	To bill stores rendered		115 51	
				115 51
				222 63

CR.

Feb. 10. By cash			100 00
			122 63
Jan. 6. To bill stores rendered		90 01	
Feb. 10. " " " "		86 77	
			177 78
			300 41

Service accepted.
(Signed) W. A. WILSON.
W. T. McCORMICK.

Intervention of Hill and Relf.—Filed 8th March, 1841.

To the honorable the judge of the commercial court of New Orleans:

The petition of Hill and Relf, merchants and partners, residing in New Orleans, *respectively* shows that the steamer Rodolph, and W. A. Wilson, owner thereof, are justly indebted to them in the sum of $277 40, with interest, for supplies, furniture, &c., sold by them to the steamer Rodolph, within sixty days previous to the 24th February, 1841; all which more fully appears by an account of the articles furnished, annexed to this petition for reference; and for which supplies, materials, &c., petitioners aver they have a privilege on said boat.

472 Petitioners show that William T. McCormick has attached said boat, which is now lying in the port of New Orleans, for his wages as mate *ordering* that he has a privilege thereon, the suit being W'm T. McCormick vs. W. A. Wilson, in this honorable court. Wherefore, by virtue of premises, petitioners pray that they may be allowed to intervene in said suit; that both William T. McCormick, the plaintiff, and W. A. Wilson, be served with a copy of this their petition of intervention; and that, after due proceedings had, there be judgment in their favor against said Wilson, with privilege on the steamer Rodolph, for the sum of $297 40, with interest, costs, &c., general relief, &c.

(Signed) C. M. JONES,
For Hill and Ralf.

Account referred to.

Steamer Rodolph bought of Hill and Relf:

Dec.	29. To 1 coil rope 409, at 15c		61 35
	1 ball twine, 3c		38
	2 bars, 28 feet, at 14c		3 92
	9 gal's sperm oil		13 50
	5 lbs. rivets, at 21c		1 25
	61 " pack'g yarn, 16		9 76
	12 " cotton rope, at 13c		4 50
	1 " wr't nails, 2c		25
	1 gal. sperm oil, 11c		12 37
473	4 " coal tar, 4c		2 00
	1 saucepan, 6; 12, at 10		4 25
	2 padlocks, at 2		50
	1 W. tacks, at 1		13

1841.			
January	2.	2 files, 7c; 1 sheet paper, 2	2 00
		½ doz. brooms, 20c	1 15
		1 ball lampwick, 2	25
	4.	2 files, at 6c	1 50
	5.	8 gals S. oil, 11	11 00
		10 lbs. cut nails, 10	1 00
		4 grate bars, 256 lbs., 4½	11 62
		Drayage, 2	25
	19.	9 gals. S. oil, 11	12 38
	21.	3 tin candlesticks, 2	75
	22.	2 emery, 2; 1 pump box, 16c	2 50
		1 cook knife, 6; 1 hatchet, 10	2 00
		6 scrub brushes, 3c	2 25
		24 lbs. pig lead, 7	1 68
	23.	1 yard cot. duck, 30	30
		3 sheets garget paper, 2	75
		20 lbs. pressed spikes, 14	2 80
		2 oars, 28 feet, at 1	3 50
		9 lbs. tarred rope, 15c	1 35
February	5.	11 S. oil, 11c	15 13
	6.	94 lbs. tin plate, iron, 8	7 52
		122 " sq. 10	12 20
		62 " pack'g yarn, 16	9 92
474		3¾ lbs. spun " 16c	60
	8.	4 gals. coal tar, 4c	2 00
		12 lbs. cut nails, 10	1 20
	9.	32 " rope, 15	4 80
		1 monkey wrench, 20	2 50
	10.	16 lbs. tarred rope, 15c	2 40
	11.	1 buck saw, 12	1 50
		1 padlock, 4	50
	22.	7 grate boxes, 448 lbs., 4½	20 16
		1 keg W. lead, 24	3 00
		2 gals. paint oil, 10c	2 50
		1 bot. turpentine, 2	25
		5 lbs. green paint, 6c	3 7
	23.	½ lb. chrome yellow	37
		1 keg W. lead, 3c	3 00
		1 bot. tu'p't'e, 2	25
		1 ball lampwick	25
		2½ gals. S. oil, 11	3 44
		1½ doz. buckets, 10 50	5 25
		Paper vermillion, 2	25
		1 qut. copal varnish, 8c	1 00
		1 hand pencil, 1	12
		2 sash tools, 1	25
			277 40
Feb'y	24.	1 kettle	20 00
			$297 00

Service accepted.
(Signed) W. A. WILSON.
(Signed) W. T. McCORMICK.

475 *Intervention of A. Silvia.—Filed March 8th*, 1841.

To the honorable the judge of the commercial court of New Orleans:

The petition of Abr'm Silvia respectfully shows that the steamer Rodolph, and W. A. Wilson, owner, are justly indebted to him in the sum of $40, for wages as steward on said boat, during the 30 days ending on the 22d February, 1841, for the payment of which he has a privilege on said boat. The account is annexed to petition for reference.

Petitioner shows that W'm T. McCormick has attached said steamer in this honorable court, in the suit of McCormick vs. Wilson, claiming a privilege for his services as mate on said boat. Wherefore, and by reason of premises, petitioner prays to be allowed to intervene in said suit; that each party be served with a copy of the petition; and that, after due proceedings had, we have judgment against said Wilson for the amount of his claim, with privilege and general relief, &c.

(Signed) C. M. JONES,
For Petitioner.

Account.

STEAMER RODOLPH AND OWNERS,
TO ABRAM SILVIA, DR.

Feb'y 22. To services for 1 month, as steward..... $40 00

(Signed) W. A. WILSON.
(Signed) W. T. McCORMICK.

476 *Intervention of G. A. Jouett.—Filed March 8th*, 1841.

To the honorable the judge of the commercial court of New Orleans:

The petition of George A. Jouett respectfully shows that the steamer Rodolph, and W. A. Wilson, owner, justly indebted to him in the sum of $260 80, for services as pilot on board of said boat, at the rate of $100 per month, up to and the month previous to the 23rd February, 1841, all which will more fully appear by his account annexed to his petition for reference, and for the payment of which he avers he has a privilege on said boat.

Petitioner avers that W'm T. McCormick has attached the said boat in this honorable court, in the suit of McCormick vs. W. A. Wilson, claiming a privilege on said boat for his services as mate. Wherefore, and by reason of the premises, petitioner prays to be allowed to intervene in said suit; that both W'm T. McCormick and W. A. Wilson be served with a copy of this petition; and that, after due proceedings had, there be judgment in his favor against said Wilson, for the sum of $260, with interest, costs, &c., with privilege on said steamer Rodolph, for general relief, &c.

(Signed) C. M. JONES,
For Petitioner.

Account.

STEAMBOAT RODOLPH AND OWNERS,
To GEORGE A. JOUETT, DR.

477	For services as pilot from 23rd Nov., 1840, inclusive, at $100 per month	$300 00
	Received at various times	40 00
	Balance due	$260 00

NEW ORLEANS, 23*d Feb'y*, 1841.

Services accepted.
(Signed) W. A. WILSON.
(Signed) W. T. McCORMICK.

Intervention of William Sanders.—Filed 8th March, 1841.

To the honorable the judge of the commercial court of New Orleans:

The petition of William Sanders respectfully shows that the steamer Rodolph, and W. A. Wilson, owner, are justly indebted to him in the sum of $41 60, for services as second steward on said boat for the 60 days previous to the 22d February, 1841, at the rate of $25 per month, for which he had a privilege on said boat. The account is annexed for reference. Petitioner shows that said steamer Rodolph has been attached in this court, in the case of McCormick vs. W. A. Wilson, claiming a privilege on said boat for his services as mate. Wherefore, and by reason of premises, petitioner prays to be allowed to intervene in said suit; that both parties be notified of this his petition of intervention; and that, after due proceedings had, he have judgment against
478 said Wilson for $41 60, interest, and costs, with privilege on said boat, general relief, &c.

(Signed) C. M. JONES,
For Petitioner.

Account.

STEAMER RODOLPH AND OWNERS,
To WILLIAM SANDERS, DR.

1841.
Feb'y 22. To services as second steward, at $25 per month.....$41 60

Services accepted.
(Signed) W. A. WILSON.
(Signed) W. T. McCORMICK.

Intervention of William Smith.—Filed March 8th, 1841.

The petition of William Smith respectfully shows that the steamer Rodolph, and W. A. Wilson, owner, are justly indebted to him in the sum of $85, as wages for his services as engineer on board of said steamer, for the thirty days previous to the 22d February, 1841, at the rate of $100 per month, all which more fully appear by reference to his account *and* annexed, for the payment of which petitioner avers he has a privilege on said boat. Petitioner shows that W'm T. McCormick has attached said boat in this honorable court, in the suit of McCormick vs. W. A. Wilson, claiming a privilege on said boat for his services as mate.

Wherefore, and by reason of premises, petitioner prays to be
479 allowed to intervene in said suit; that both McCormick and Wilson be served with a copy of this petition of intervention; and that, after due proceedings had, he have judgment against said Wilson for $85, with interest and costs, with privilege on said steamer, for general relief, &c.

(Signed) E. M. JONES,
For petitioner.

Account.

STEAMER RODOLPH AND OWNERS,
To WILLIAM SMITH, DR.

1841.
Feb'y 22. To services as engineer, $100 per month.....$85 00

Service accepted.
(Signed) W. A. WILSON.
(Signed) W. T. McCORMICK.

Intervention of John Sherry & Co.—Filed 8th March, 1841.

To the honorable the judge of the commercial court of New Orleans:

The petition of John Sherry & Co. respectfully shows that steamer Rodolph, and W. A. Wilson, owner, are justly indebted to him in the sum of $50 59 for provisions furnished the said steamer during the last sixty days, ending 22d February, 1841, for which they have a privilege on said boat. The account is annexed for reference. Petitioners show that said boat has been attached in this court, in the suit of McCormick
vs. W. A. Wilson, claiming a privilege on said boat for services
480 as mate. Wherefore, and by reason of premises, petitioners ask to be allowed to intervene in said suit; that both McCormick and Wilson be served with a copy of this his petition of intervention; and that, after due proceedings had, we have a judgment against said Wilson for $50, with interest and costs, with privilege on said steamer, for general relief, &c.

(Signed) B. M. JONES,
For Petitioner.

Account.

NEW ORLEANS, *Feb'y* 20, 1841.

Steamer Rodolph bought Jno. Sherry & Co.:

6 bbls. potatoes, 15⅛	$9 75
68 lbs. butter, 15	10 20
50 " lard, 5½	4 48
1 bbl. pork, 5	9 01
Drayage	25
199 lbs. hams, 8½	16 90
	$50 59

Service accepted.
(Signed) W. A. WILSON.
W. T. McCORMICK.

Intervention of Wm. Fagens.—Filed 8 March, 1841.

To the honorable the judge of the commercial court of New Orleans:

The petition of Wm. Fagens respectfully shows that the steamer
481 Rodolph, and W. A. Wilson, owner, are justly indebted to him in the sum of $135, balance due him for his wages as 2d engineer on board said steamer, for the last sixty days, ending on the 22d February, 1841, at the rate of $75 per month, for which he avers he has a privilege on said boat. The account is annexed for reference. Petitioner shows said boat has been attached in this honorable court in the case of McCormick vs. W. A. Wilson, claiming privilege for his services as mate. Wherefore, and by reason of premises, petitioner prays to be allowed to file this his petition of intervention in said suit; that both parties be notified thereof; and that, after due proceedings had, we have judgment against said Wilson, with privilege on said boat, for the sum of $135, interest and costs, general relief.

(Signed) C. M. JONES.

STEAMER RODOLPH AND OWNER,
To WM. FAGENS, DR.

For services as above stated $135 00

Service accepted.

(Signed) W. A. WILSON.
W. T. McCORMICK.

482 *Intervention of Charles Heffeman.—Filed 8 March, 1841.*

To the honorable the judge of the commercial court of New Orleans:

The petition of Charles Heffeman respectfully shows that the steamer Rodolph, and W. A. Wilson, owner, are justly indebted to him in the sum of $62 for butcher meat furnished said boat during the last thirty days, ending the 22d February, 1841, for which he has a privilege on said boat. The account is annexed for reference. Petitioner shows said steamer has been attached in this honorable court in the suit of McCormick vs. W. A. Wilson, claiming a privilege on said boat for wages as mate. Wherefore, and by reason of premises, petitioner prays to be allowed to intervene in said suit; that both parties be notified of this his petition of intervention; and that, after due proceedings had, we have judgment for said sum of $62, with interest, costs, &c., with privilege on said boat, for general relief, &c.

(Signed) C. M. JONES,
For Petitioner.

Service accepted.

(Signed) W. A. WILSON.
W. T. McCORMICK.

483 *Third opposition of Municipality No. 2.—Filed 24 March, 1841.*

McCORMICK
vs.
WILSON AND STEAMER RODOLPH.

Municipality No. 2, a corporation in New Orleans, respectfully shows that the owners of the steamer Rodolph are indebted to them in the sum of $20 for wharfage of said steamer Rodolph, due February 24, 1841,

price of which said steamer has not made a voyage. Petitioners pray that plaintiff, defendant, and sheriff be cited to answer. Petitioners pray for judgment for said sum of $20, and that they may be paid by preference over all other creditors out of the proceeds of said boat.

(Signed) E. RAWLE,
For M. No. 2.

2D MUNICIPALITY.

Account.

No. . Received $20, the amount of wharfage due to 2d Municipality, from the steamboat Rodolph. February 20th, 1841, (New Orleans.)

(Signed) A. PINTE, *Deputy Collector.*
J. CALHOUN,
Collector of Levee Dues.

Service waived.

(Signed) C. M. JONES.
MURPHY,
Deputy Sheriff.

484 *Default.*

May 12th, 1841.

On motion of C. M. Jones, of counsel for plaintiff, and on showing to the court that defendant has failed to answer, though duly cited,

Ordered that judgment by default be herein rendered against said defendant.

Default against defendant on intervention.

May 12th, 1841.

On motion of C. M. Jones, of counsel for Geo. M. Jerrett, Hill and Relf, A. Sylvia, Cha's Heffeman, T. B. Winston, W. Fagens, Sherry & Co., W. Smith, W'm Sanders, intervenors in this case, and on showing to the court that defendant W. A. Wilson had failed to answer the petition of intervention of each of the above-named intervenors, though cited,

Ordered that judgment by default be herein rendered on said intervention against said defendant.

Judgment.

June 19th, 1841.

On motion of C. M. Jones, of counsel for plaintiff and intervenors in this case, and on producing to the court due proof of the demand of said plaintiff and said intervenors,

It is considered that the judgment by default herein rendered on the 12th May, 1841, be confirmed, and that said plaintiff, W. T.
485 McCormick, and the said intervenors hereinafter named, recover from the defendant W. A. Wilson, owner of the steamer Rodolph, with privilege on said steamer, as follows, viz: That the plaintiff W. T. McCormick recover from said defendant the sum of $855 94; that W'm

Sanders recover the sum of $41 60; W'm Smith recover the sum of $85; Sherry & Co., $50 59; A. Sylvia, $40; W'm Fagens, $135; Hill and Relf, $297 40; T. B. Winston, $300 41; G. A. Jouett, $200; C. Heffeman, $62.

And it is further considered that defendant pay costs of suit.

Rendered June 19th, 1841. Signed June 24th, 1841.

(Signed) C. WATTS, *Judge.*

Certificate of judgment.

THE STATE OF LOUISIANA,
Commercial Court of New Orleans:

I hereby certify that, on the 19th day of June, 1841, judgment was entered in this court in the suit of W'm T. McCormick v. W. A. Wilson, owner of steamboat Rodolph, (see judgment copied above;) judgment recorded in judgment docket, p. 296; which costs amount to the sum of , exclusive of the sheriff's fees.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on the 24th
486 June, A. D. 1841, and in the 65th year of the independence of the United States.

[SEAL.] PE. DEVERGES,
Deputy Clerk.

Sheriff's return.

Received 24th June, 1841. The defendant could not be found after diligent search. Returned August 16, 1841.

(Signed) MURPHY, *D. S.*

Fi. fa.

Louisiana, commercial court of New Orleans.

The State of Louisiana to the sheriff of the commercial court of New Orleans, greeting:

We command you, in the name of Louisiana and of the commercial court of New Orleans, that you demand from W. H. Wilson the sum of $855 94, recovered by W. T. McCormick, plaintiff; the sum of $41 60, recovered by William Sanders, intervenor; the sum of 50 59, recovered by Sherry & Co., intervenors; the sum of $85, recovered by W'm Smith, intervenor; the sum of $135, recovered by W'm Fagens, intervenor; the sum of $300 41, recovered by T. B. Winston, intervenor; the sum of $40, recovered by A. Sylvia, intervenor; the sum of $62, recovered by C. Heffeman, intervenor; the sum of $297 40, recovered by Hill and Relf, intervenors; the sum of $200, recovered by G. A. Jouett, inter-
487 venor; and also the sum of $30 37, costs, which they lately recovered by judgment of the commercial court of New Orleans; and if they shall not pay the same after legal demand, that then you cause to be made out of the personal estate of the said W. A. Wilson, except slaves, in your district, if sufficient personal estate, exclusive of slaves, cannot be found in your district, whereof he was owner on the 24th day of June, 1841, in whose hands soever the same may have come, and that you have the moneys before our said court, to render the said W. T. McCormick and others aforesaid, for the judgment aforesaid, on the Monday of February next, together with this writ.

Witness the Honorable Charles Watts, judge of the said court, the 18th day of December, A. D. 1841, and in the 66th year of the independence of the United States.

[SEAL.] (Signed) R. GARDERE,
Deputy Clerk.

Sheriff's return.

Received December 18th, 1841, and seized three notes drawn by G. W. Russell to the order of the endorser, S. G. Ogden, for $1,033 33 each, and dated 12th April, 1841, payable 3, 6, and 9 months after date, protested for non-payment, said notes being in my hands as the pro-
488 ceeds of the sale of the steamboat Rodolph, and executed this writ in all things as the law directs. No other property found. Returned 1st Monday of February, 1842.

(Signed) MURPHY, *Deputy Sheriff.*

STATE OF LOUISIANA,
4th District Court of New Orleans:

I, W'm C. Auld, clerk of the 4th district court of New Orleans, do hereby certify that the foregoing 25 pages, and a portion of a page, contain a full and complete transcript of the record of the case wherein W. T. McCormick is plaintiff and W. A. Wilson is defendant, instituted in the late commercial court of New Orleans, under the No. 3635; and I do further certify that, pursuant to an act of the legislature of this State approved the 30th of April, 1846, the records of the said late commercial court have been transferred to this court, and are now in my custody and possession as clerk aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this 18th day of May, A. D. 1857, and in the 81st year of the independence of the United States.

[SEAL.] W'M C. AULD, *Clerk.*

489 The judge's certificates to the foregoing is in due form, dated 18th May, 1857.

(Signed) JOHN W. PRICE,
Judge 4th District Court of New Orleans.

On the 23rd May, 1857, the following notice and deposition were received by mail, under seal Commonwealth Kentucky, Jefferson circuit court:

Notice.

JOHN W. RUSSELL
vs.
RICHARD CHRISTMAS AND OTHERS.

The defendants will take notice that, on the 16th day of May, 1857, at the office of John Price, esq., New Orleans, Louisiana, *city of* , *State of* , the plaintiff will proceed to take the deposition of sundry witnesses, to be read as evidence in the above suit; the taking of the same will be continued from day to day (Sundays excepted) until finished.

May 6th, 1857.

BARRETT AND WOOD,
Attorneys.

(Indorsed:) As attorneys for defendant Richard Christmas, we acknowledge service of this notice.
May 6th, 1857.

BODLEY AND PINDELL.

The deposition of L. Madison Day, esqr., taken 16th May, A. D. 1857, at the office of John W. Price, esqr., attorney at law, in the city of
490 New Orleans, &c., sworn, says:

I am an attorney at law in the city of New Orleans, Louisiana, and have been for many years. The settled and estalished law of this State in regard to lien and privileges on steamboats, is and was, in the year 1836, and has been since, that all persons who furnish supplies to steamboats, and all persons who perform labor on steamboats, have a lien for all supplies furnished and all labor performed on steamboats, within 60 days from the date of furnishing such supplies, or rendering services thereto and thereon. The law upon the subject in Louisiana is proved in the case of Lee vs. His Creditors, 2d Louisiana Annual Reports, pages 599 to 604, which is made part of this deposition. I further understand the law in this State to be, that those liens or privileges adhere to the boat or vessel, or attach thereto, and that no steamboat upon which any such lien or privilege exists can be sold to defeat and divest such lien or privileges, and that such lien or privilege may be enforced against any bona-fide purchaser of any boat.

L. MADISON DAY.

Also the deposition of Bentuck Eagan, esq.

I am an attorney at law practising in the city of New Orleans.
491 The settled rule of law in this State, with regard to persons who furnish previous supplies, or performing work or labor on steamboats or other vessels, have a privilege or lien on such vessels or steamboats from the date they furnish such supplies or perform such labor or services, of 60 days over all others.

BENTUCK EAGAN.

The deposition of John S. Relf, esq., taken at the same time and place, sworn, says:

I reside in the city, and was a member of the late firm of , doing business in the city under the name and style of Hill and Relf, hardware merchants. The said firm furnished the steamboat Randolph in the year 1841 certain supplies, and the bill for the same, amounting to between 2 and $300, was, to the best of my recollection, and judging from my recollection of the circumstances, paid by Captain Russell, who was then captain of the boat, or interested therein at the time.

J. SIDNEY RELF.

Examinations and certificates to the foregoing depositions in due form, dated 16th May, 1857.

(Signed) WALTER H. PETERS,
Commissioner for Kentucky.

492 On the 12th November, 1857, came the defendant's attorney, and filed grounds for a new trial, viz:

RUSSELL
vs.
CHRISTMAS. } Jefferson circuit court.

1. The verdict is against law and evidence.
2. The defendant was surprised by the evidence of Mrs. Wales. (See affidavit of Bodley, filed.)
3. The verdict was for an excessive sum, and because there is error in the assessment of the amount of recovery.

W. S. BODLEY,
Plaintiff's Attorney.

On the 24th February, 1858, the following affidavits were filed:

Affidavit of Thomas Christmas.

I knew defendant, Richard Christmas, in the year 1839, and 1840, and ever since affiant knows. Defendant was in Madison County, Mississippi, during the month of January, 1840, and up to the 11th February, same year. Affiant is able to fix the time from the following circumstances: Defendant was, from the above-stated time, say from 1st January, 1840, to 11th February, same year, engaged in a trade with affiant and Henry Christmas for land and negroes, situated in Madison
493 County, Mississippi, where affiant and Henry Christmas lived in January, 1840, which trade defendant did make with affiant and Henry Christmas on 11th February, 1840. Affiant recollects that defendant had much trouble and delay in making the arrangement for said trade agreeable. The terms were, that defendant was to pay certain debts due by affiant and Henry Christmas. Among the most important was a debt due to John Simmons by affiant and Henry Christmas for some 18 or $19,000, which defendant did pay to said Simmons between the 1st and middle of January, 1840. Affiant recollects that defendant and family was staying at the house of Alexander Allen, in said Madison County, Mississippi, during the above negotiations in January, 1840, some 2 miles from affiant's house, in said c'ty of Madison; and Mrs. Christmas, wife of defendant, was taken violently ill about the middle of the month of January, 1840, and her life almost despaired of for some 8 or 10 days after, during which time defendant and affiant were in attendance daily. Affiant recollects to have given defendant a receipt on the 23rd of January, 1840, at Livingston, Mississippi, which receipt affiant attaches to this affidavit, and is marked "K." This receipt
494 I signed at Livingston, Mississippi, and handed to defendant on 23rd January, 1840, for the purpose therein specified. From the above circumstances affiant is certain that defendant was in Madison County during the month of January, 1840, and up to 11th February, 1840, and could not have been absent from the State of Mississippi during the above time without the knowledge of affiant; and affiant is certain defendant was not so absent, as affiant was in almost daily intercourse with defendant during the month of January, 1840, and part of defendant's time was spent at affiant's, in said Madison County, Mississippi, but the greater portion at the house of Alexander Allens, in same *city* of Madison, Mississippi.

THOMAS H. CHRISTMAS.

MISSISSIPPI, *Warren County, ss:*
Personally appeared me, Laurence S. Houghton, a justice of the

peace of the county of Warren, Tho's H. Christmas, , being duly sworn, deposeth that the matters and things set forth in the foregoing affidavit are as therein stated.

L. S. HOUGHTON, *J. P.*

Receipt.

LIVINGSTON, MISS., *Jan'y 23d*, 1840.

495 Received of R. Christmas $600, in full payment for a negro boy called "Harry," (a runaway,) sold to H. G. Runnels as my property, and on my account, which sale I hereby ratify and confirm, and will hold you harmless on account of said sale.

T. CHRISTMAS.

Affidavit of J. S. Brian.

NASHVILLE, *Dec. 23rd*, 1857.

On the 11th day of February, 1840, while in Madison County, Missi., I wrote, at the instance of Richard Christmas, deeds, the copies of which are now before me, which I believe to be copies of the original written by me, and upon which copies I have here written my name. R'd Christmas was present at the time the deeds were written. I see the deeds are dated 11th Feb'y, 1840. I therefore conclude that this was the day the writing was done, for several days before the writing was done I was in consultation with Christmas as to the propriety and legality of the sales and transfers mentioned in the deeds. We were Canton, Miss. Our first interview was several days before the deeds were drawn, but how many I cannot at this distance of time remember; but my
496 impression is, that it must have been a week or more, and for this reason, that I was not satisfied that the thing could be done, and so mentioned to Christmas, and took some time to consider of it. I finally decided it could be done. I therefore fixed upon a future day, when I would accompany him to his brother's, about 10 miles distant from Canton, and drew the deeds. I did not go out with him at the time designated, and wrote the papers. I did not know Christmas was out of Madison County from our first interview till after the writing was done. I think I saw him every day during that time. These are my best impressions of what took place there, and I believe them correct; yet I may possibly be mistaken, as the transaction has been so long ago.

JOHN S. BRIEN.

STATE OF TENNESSEE, *Davidson County:*

I, Josiah Ferris, notary public within and for said city and State, duly commissioned and sworn, do hereby certify John S. Brien, with whom I am personally acquainted, this day came before me, and made oath that the foregoing statements are true.

Given under my hand and notarial seal, at office in the city of
497 Nashville, Tenn., on the 23rd day of Dec., 1857.

[SEAL.] JOSIAH FERRIS.

The *foregoing* are the copies of deeds referred to in the foregoing:

Received for record 27th, and recorded 29th February, 1840.

Deeds.

This indenture, made and entered into this 11th day of February, A. D. 1840, between Richard Christmas, and Mary E., his wife, of the county of Warren, and State of Mississippi, and W'm B. Norfleet, of the county of Madison, and State aforesaid, of the one part, and Henry Christmas and Thomas H. Christmas, of the said county of Madison, and State aforesaid, of the other part, witnesseth that whereas the said Richard Christmas and W'm B. Norfleet are justly indebted to the said Henry and Thomas Christmas in the sum of $60,392 60 cts., for which they have executed and delivered their several promissory notes, bearing even date with these presents, as follows, to wit: two for the sum of $6,500 each, payable to the said H. and T. H. Christmas, or order, on or before the 1st day of March, 1841, negotiable and payable at the Com'l Bank, at New Orleans; two for the sum of $6,500, payable in like man-
498 ner as the last, on or before the 1st day of March, 1842; one for the sum of $1,300, negotiable and payable as aforesaid on or before the 1st day of March, 1843; one other sum of 13,000, negotiable and payable as aforesaid on or before the 1st day of March, 1844; and one other for the sum of $8,392 60 cts., negotiable and payable as aforesaid on or before the 1st day of March, 1845; all of which notes are written on the face thereof, secured by mortgage on real estate and slaves; and the said Richard Christmas and W'm B. Norfleet are anxious and desirous to secure the punctual payment of the said several promissory notes as they respectively fall and become due:

Now, therefore, this indenture witnesseth that the said Richard Christmas and wife, and Wm. B. Norfleet, for and in consideration of the premises, and for the further consideration of $10 to them in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell, unto the said Henry Christmas and Thos. H. Christmas, and to their heirs and assigns forever, a certain tract or parcel of land situate, lying, and
499 being in the c'ty of Madison aforesaid, being the same land which is embraced in the following subdivisions, to wit: The south half of section 35, in township 9, range 1 east; section 2; the W. ½ of the N. W. ¼ of section 1, the W. ½ of the S. W. ¼ of sect. 1, the E. ½ of sect. 2, and 95 acres in sect. 4, in township 8, range 1 east, bounded on the S. side by the s'n boundary of said sect. 4, and extending N. in said section, containing in all 1,535 acres, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and all the estate, right, and title of them, the R'd Christmas and wife, and W'm B. Norfleet, have granted, bargained, and sold, and by these presents do bargain and sell, unto the said H. C. Christmas and Thomas H. Christmas, the following negroes, slaves for life, and their increase, to wit: Adam, 25 years of age; Anderson, 25 years of age; Cudgeon, 25 years of age; Jim, 35 years of age; Henry, 30 years of age; Davy, 25 years of age; Reuben, years of age; Albert, 22 years of age; Mark, 45 years of age; John, 20 years of age; Aaron, 25 years of age; *Aaron*, 20 years of age; Pomp, 22 years of age; Levoy, 38 years of age; Billy C., 30 years of age; Henry, 22 years of age; Mingo, 25 years of age; Cato, 18 years of age; Robert, 25
500 years of age; Noah, 30 years of age; Jesse, 35 years of age; Ned, 35 years of age; More, 25 years of age; Paul, 35 years of age;

Edmund, 45 years of age; Dan'l, 16 years of age; Isaac, 12 years of age; Shade, 12 years of age; Chas., 15 years of age; Granowith, 14 years of age; Dick, 15 years of age; John, 22 years of age; Ben, 13 years of age; Tom, 22 years of age; Peter, 16 years of age; Ned, 18 years of age; Stump, 25 years of age; Billy, 25 years of age; Roes, 30 years of age; Will, 30 years of age; Spencer, 30 years of age; Sarah, 18 years of age; Maria, 18 years of age; Mary, 20 years of age; Mahalah, 20 years of age; Cloe, 20 years of age; Ann, 25 years of age; Lydia, 18 years of age; Mary, 16 years of age; Abby, 20 years of age; Maria, 27 years of age; Hannah, 20 years of age; Ann, 20 years of age, and her child; Viney, 35 years of age; Milly, 20 years of age; Harriet, 25 years of age; Celia, 14 years of age; Peggy, 18 years of age; Caroline, 24 years of age; Eliza, 16 years of age; Dolly, 18 years of age; Mary, 18 years of age; Eady, 14 years of age; Emily, 14 years of age; Caroline, 16 years of age; Jane, 25 years of age; Betsey, 16 years of age; Daca, 20 years of age; Emily, 10 years of age; Frazier, 8 years of age; Julia, 20 years of age, and her child; Aggy, 45 years of
501 age; Susan, 16 years of age; Julia Ann, 10 years of age; Blount, 4 years of age; Esther, 6 years of age; Jackson, 9 years of age; Mingo, 12 years of age; Hagon, 6 years of age; and Washington, 5 years of age. Also 30 head of mules and horses, and stock of cattle and hogs, farming utensils, wagons and carts, and blacksmith's tools, on or connected with the plantation, on the land and premises hereby sold and conveyed; the land hereby conveyed being the same land and negroes, and a portion of the other property, which, by deed of bargain and sale bearing even date with these presents, was conveyed by the said Henry Christmas and wife, and Thomas H. Christmas, to said Richard Christmas and Wm. B. Norfleet. And the object of this conveyance is to secure to the said Henry and Thomas H. Christmas, and their heirs and assigns, the payment of the debt aforesaid; and said Richard Christmas and Wm. B. Norfleet now agree to appropriate the said profits to the said object: To have and to hold the land and premises bargained and sold, with the hereditaments and appurtenances thereto belonging, or in any wise appertaining, with the rents and profits thereof, and the negroes and other property aforesaid, with the increase of the females of said negroes, and all the profits, production, and products of
502 the labor of the said negroes, unto them, the said Henry Christmas and Thomas H. Christmas, their heirs and assigns, to them and their only proper use and behoof forever: Provided, however, and the conveyance is made on condition, that should the said Richard Christmas and Wm. B. Norfleet well and truly pay the sum of money aforesaid, and each and every part thereof, when and as each of the promissory notes aforesaid fall and become due, and all costs, interests, and charges which may accrue thereon, then, and in that event, the conveyance shall be void, and the estate thereby conveyed shall cease and be determined; otherwise to be and remain in full force and effect.

In testimony whereof the said Richard Christmas, Mary E., his wife, and William B. Norfleet have hereunto set their hands and seals the day and year first before written.

R. CHRISTMAS. [SEAL.]
W'M B. NORFLEET. [SEAL.]
MARY E. CHRISTMAS. [SEAL.]

Signed, sealed, and delivered in presence of—

Personally appeared before me, a justice of the peace, the within-named W'm B. Norfleet, who acknowledged that he signed, sealed, and delivered the within deed of mortgage and conveyance to the
503 said Henry and Thomas H. Christmas on the day and year therein specified, for the purposes therein mentioned, as his act and deed.

Given under my hand and seal this 25th day of February, 1840.

WILL DE HART. [SEAL.]

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared Richard Christmas before me, Edward R. Warren, an acting justice of the peace and ex-officio notary public for said county, and acknowledged that he signed, sealed, and delivered the within deed of mortgage and conveyance on the day and year therein named, and for the purposes therein specified, as his act and deed. Also personally appeared Mary E. Christmas, wife of the said Richard Christmas, before Edward Warren, an acting justice of the peace and ex officio notary public as aforesaid; and being by me privately examined, separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the within deed of mortgage and conveyance as her voluntary act and deed, without any fear, threats, or compulsion of her said husband, on the day and year therein mentioned, and for the purposes therein specified.

504 Given under my hand and seal this the 22d day of February, A. D. 1840.

EDWARD WARREN,
Justice of the Peace and Ex-officio Notary Public.

THE STATE OF MISSISSIPPI, *Madeira County, sct:*

I, John T Cammel, clerk of the probate court of said county, hereby certify the foregoing deed to be a transcript from the records of my office book of deeds "G," pages 431, 432, 433, 434.

Given under my hand and seal of office, at Canton, this 5th day of December, A. D. 1857.

[L. S.] JOHN T. CAMMAL, *Clerk.*

STATE OF MISSISSIPPI, *Madison County:*

I, Josiah Simmons, sole judge of probate in and for said county and State, do hereby certify that John T. Cammal, whose genuine signature appears to the foregoing *signature*, is, and was at the time of signing the same, clerk of said court, duly elected, commissioned, and qualified according to law; that his said certificate is in due form of law, and by the proper officer; that the seal thereto affixed is the seal of said court; and that all of his official acts are entitled to full faith and credit.

Given under my hand and seal this 8th day of December, 1857.

[SEAL.] J. M. SIMMONS, *Judge of Probate.*

505 *Christmas and Christmas, deed—Christmas and Norfleet.*

Received for record 15th; recorded 29th, 1840.

This indenture, made and entered into this 11th day of February, A. D. 1840, between Henry Christmas, and Ann D. Christmas, his wife, of the county of Madison, and State of Mississippi, and Thomas H.

Christmas, of the same county and State, of the one part, and Richard Christmas, of Warren County, and W'm B. Norfleet, of the same county and State aforesaid, of the other part, witnesseth that the said Henry Christmas and wife, and Thomas H. Christmas, for and in consideration of the sum of $80,000 to them in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell, unto the said Richard Christmas and W'm B. Norfleet, and to their heirs and assigns forever, a certain tract or parcel of land situate, lying, and being in the county of Madison aforesaid, being the same land which is embraced in the following subdivisions, to wit: The south half of section 35, in township 9,
506 range 1 east; section 2; the west half of *of* the N. W. quarter of section 1, the west half of the southwest quarter of section one, the east of section 2, and 95 acres in section 4, in township 8, range 1 east, bounded on the south side by the southern boundary of said section 4, and extending *south* in said section, containing in all 1,535 acres, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and all the estate, right, and title of them, the said Henry Christmas and wife, and Thomas H. Christmas, of, in, and to the same, and every part and parcel thereof. And for the same consideration the said Henry Christmas and Thomas H. Christmas have bargained and sold and delivered, and by these presents do bargain, sell, and deliver, unto the said Richard Christmas and W'm B. Norfleet, and to their heirs and assigns, forever, the following negroes, with the increase of the females, to wit:

Adam.....	about	25	years	of age.	Anderson ..	about	25	years	of age.
Cudjo.....	"	25	"	"	Jim.....	"	30	"	"
Henry.....	"	30	"	"	Davy.....	"	35	"	"
Reuben....	"	30	"	"	Albert.....	"	22	"	"
Mark.....	"	45	"	"	John.....	"	20	"	"
Aaron	"	25	"	"	Aaron.....	"	20	"	"
507 Pomp	"	22	"	"	Leroy.....	"	30	"	"
Billy C.	"	30	"	"	Henry.....	"	22	"	"
Mingo.....	"	25	"	"	Cato.....	"	18	"	"
Robert.....	"	25	"	"	Noah.....	"	30	"	"
Jesse.....	"	35	"	"	Ned.....	"	35	"	"
Moses.....	"	25	"	"	Paul.....	"	35	"	"
Edmond....	"	45	"	"	Daniel.....	"	16	"	"
Charles....	"	15	"	"	Isaac.....	"	12	"	"
Shad.....	"	12	"	"	Granott....	"	14	"	"
Deck.....	"	15	"	"	John.....	"	20	"	"
Ben.....	"	13	"	"	Tom.....	"	20	"	"
Pete.....	"	16	"	"	Ned.....	"	18	"	"
Stump.....	"	25	"	"	Billy.....	"	25	"	"
Rives.....	"	30	"	"	Will.....	"	30	"	"
Spencer....	"	30	"	"	Sarah.....	"	18	"	"
Maria.....	"	28	"	"	Mary.....	"	20	"	"
Mahala....	"	20	"	"	Cloe.....	"	20	"	"
Ann.....	"	5	"	"	Lydia.....	"	18	"	"
Mary.....	"	16	"	"	Abby.....	"	20	"	"
Maria.....	"	27	"	"	Hannah....	"	20	"	"
Ann.....	"	20	"	"	and her child.				

Viney	about	35	years	of age.	Celia	about	15	years	of age.
Peggy	"	18	"	"	Caroline	"	25	"	"
Eliza	"	16	"	"	Dolly	"	18	"	"
Mary	"	18	"	"	Eady	"	14	"	"
Emily	"	14	"	"	Caroline	"	16	"	"
Jane	"	25	"	"	Emily	"	16	"	"
Dorcas	"	20	"	"	Julia	"	20	"	"
508 Frazier	"	8	"	"	Betsy	"	10	"	"
Aggy.	"	45	"	"	and her child.				
Julia	"	10	"	"	Susan	"	16	"	"
Esther	"	6	"	"	Blount	"	4	"	"
Jackson	"	9	"	"	Mingo	"	12	"	"
Hagar	"	6	"	"	Washington.	"	5	"	"

Also 30 head of mules and 6 horses, and the stock of cattle and hogs, farming ustensils, wagons and carts, the corn and fodder, oats and bacon, and blacksmith's tools, on or connected with the plantation, on the land and premises hereby sold and conveyed; and the household and kitchen furniture now in the dwelling-house on the premises, and one pleasure-carriage: To have and to hold the land and premises hereby conveyed, with the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the negroes and other property before mentioned, with the increase of the females of the negroes aforesaid, unto them, the said Richard Christmas and W'm B. Norfleet, their heirs and assigns, to his and their only proper use, benefit, and behoof forever. And the said Henry Chirstmas and wife, and Thomas H. Christmas, for themselves, their heirs, executors, administrators, hereby covenant and agree, to and with the said Richard Christ-
509 mas and W'm B. Norfleet, their heirs and assigns, that the before-described land and bargained premises, against the claim or claims of all and every person or persons whatsoever, unto the said Richard Christmas and W'm B. Norfleet, their heirs and assigns, they do and will warrant and forever defend by these presents; and the said Henry Christmas and Thomas H. Christmas hereby covenant and agree to and with the said Richard Christmas and W'm B. Norfleet, their heirs and assigns, that the negroes aforesaid are sound, sensible, and healthy, and slaves for life.

In testimony whereof the said Henry Christmas, his wife, and Thomas H. Christmas have hereunto set their hands and seals the day and year first above written.

H. CHRISTMAS. [SEAL.]
THO'S H. CHRISTMAS. [SEAL.]
ANN D. CHRISTMAS. [SEAL.]

Signed, sealed, and delivered in presence of—
CHA'S W. ALLEN.
A. G. BENNETT.

STATE OF MISSISSIPPI, *Madison County:*

Personally appeared before me, a J. P. of said county, the within-named Henry Christmas and Thomas H. Christmas, who acknowledged that they signed, sealed, and delivered the foregoing deed of conveyance to the said Richard Christmas and W. B. Norfleet, on the day and
510 year therein mentioned, as their act and deed. And at the same time and place personally appeared before me also Ann D. Christmas, wife of the said Henry Christmas; and being by me examined pri-

vately and apart from her said husband, she acknowledged that she signed, sealed, and delivered the foregoing deed of conveyance to the said Richard Christmas and W. B. Norfleet freely and voluntarily, without any fear, threats, or compulsion, from her said husband, on the day and year therein named, as her voluntary act and deed.

Given under my hand and seal this 13th day of February, 1840.

WILL D. HART, [SEAL.] *J. P.*

STATE OF MISSISSIPPI, *Madison County, sct:*

I, John J. Camenel, clerk of the probate court in and for the county and State aforesaid, hereby certify the foregoing deed to be a true transcript from the records of my office, Book of Deeds "G," pages 429, 430, and 431.

Given under my hand and seal of office, at Canton, this 5th day of December, A. D. 1857.

[SEAL.] JOHN T. CAMENEL, *Clerk.*

STATE OF MISSISSIPPI, *Madison County:*

I, Isiah M. Simmons, sole judge of probate in and for said
511 county and State, do hereby certify that John Camenal, whose genuine signature appears to the foregoing certificate, is, and was at the time of signing the same, clerk of said court, duly elected, commissioned, and qualified according to law; that this said certificate is in due form of law and by the proper officer; that the seal thereto affixed is the seal of said court; and that all of his official acts are entitled to full faith and credit.

Given under my hand and seal this 8th day of December, A. D. 1857.

[SEAL.] J. M. SIMMONS,
Judge of Probate.

Affidavit of F. Carter.

The following is the affidavit of Frank Carter, filed in the following case:

RUSSELL
vs. } Jefferson County court.
CHRISTMAS.

Frank Carter says that he was well acquainted with Capt. W'm A. Wilson, who formerly commanded the steamer Rodolph, and who married Miss Shane, and he has seen him write. He has examined the letter hereto attached, dated Vicksburg, Sept. 7th, 1840, and purporting to be from said Wilson to Richard Christmas, at Mississippi Springs,
512 near Clinton, Mississippi, and recognizes it as the handwriting of said Wilson, and believes it to be such.

FRANK CARTER.

Sworn to before me by Frank Carter this 25th of February, 1858.

H. C. PURDELL, *N. P. J. C.*

Letter referred to above.

VICKSBURG, *September 7th*, 1840.

Mr. R. C. CHRISTMAS.

DEAR SIR: I arrived here this morning on the steamer Wilmington,

and shall leave in the morning for Yazoo. Mr. Begley, this evening, showed me your letter to him, saying you had received my letters. From my not receiving an answer, I concluded the letter to you had miscarried. On my last trip to New Orleans, the inspectors came aboard and informed me the boat could not be insured, or her cargo, until she was repaired. Consequently I had to take her over to the ship yard, as by her not being insured, Mr. Samuels would be at any time liable to close his mortgage on her. I have made a contract with the carpenter to get one-third of her repairs done on a credit of 90 days. Her repairs will probably cost $2,000. As I stated to you in my previous letter, I have not money to repair her, or to commence, altho' having made and
513 signed an agreement to have her done in three weeks from that time. I am sorry to be under the necessity of again calling on you; have advanced money for her to some amount, but I will make one proposition to you, which, I think, will be satisfactory. The boat in her present state would not sell for a sufficient to pay Samuels and what she owe you; if you cannot possibly furnish the money to repair her until spring, and pay Samuels, if possible, that shall, at your request, be sold, and, after paying her debts, the balance shall be given to you, or a sufficient to pay you all that you have advanced for the boat. In this I think you would be safe, and this I will freely give my consent to; for, I assure you, Mr. Christmas, I wish you not to loose one dollar by the boat, if I can avoid it, and what I have in the boat, altho' it is my all, yet I will loose it and commence the world again. I have been unfortunate in not making money with the boat this season, yet I cannot blame myself with any neglect or mismanagement of the boat, as my time and attention has been entirely devoted to her, and her books at any time open to the inspection, for I have also kept an eye to that part of the business. I am well aware of the times;
514 and could I have resorted to any means, I would not have called on you, but it is impossible for me to raise the money. If you can arrange the matter, the boat, as I before stated, should be sold at your request, in the spring, for your benefit, to reinstate you in the amount you may have and may advance for her. You can, at any time, draw on the boat for what sums there may be on hand. The boat would not probably, at this time, sell for enough to pay Samuels and the money you have advanced, nor could she be sold to advantage with the mortgage on her. If you think of any arrangement to suit you better, I am willing and will consent to it. Since writing to you, I have found Mr. Green that I mentioned in my letter was not the man he was represented to have been, and have dropped him on the contract for the agency at Port H——— also. I shall return here the last of the week from Ya—s. I am going up to secure some business of the planters for the boat, and would be glad to see you here, as it is impossible for me to return to N. Orl. until I make some arrangements to raise the money to pay for the repairs of the boat, as I would lay myself liable to
515 prosecution on the contract. The drafts you gave me on Mr. Hill, last winter, I never used, having been able to get along without it. Let me hear from you as soon as possible, as my attention is wanting in New Orleans as soon as I can arrange this matter. I shall be at Satartia and the neighborhood for several days. My wife is still in Louisville, and in bad health. Write me as soon as possible.

Your ob't servant,

W. A. WILSON.

Affidavit of Ja's Kelly.

The following is the affidavit of James Kelly:

Be it known that on this 14th day of December, 1857, before me, Lazarus Lindsay, a commissioner for the State of Kentucky, in said State of Mississippi, duly commissioned and sworn, and residing in said *city*, personally came and appeared James Kelly, who, being by me first duly sworn, states that in December, 1839, and January, 1840, he, affiant, was in New Orleans, La.; that he was the carpenter on the steamer Rodolph, the same steamboat purchased by Richard Christmas and others from John W. Russell and others; that his recollection is, that said Richard Christmas was also in New Orleans, in one or both
516 of these months; and that said Richard Christmas, before and after January, 1840, was often on the steamboat Rodolph, acting as owner, and that he was back and forth to New Orleans frequently. Affiant was an officer on said steamer nearly all the time she was owned by said Richard Christmas, Wilson, &c., and always understood Richard Christmas was an owner; he so acted and directed about said boat's affairs, and was so recognized by her officers and agents. Affiant was intimate with some of the owners, and in common conversation about the management and ownership of said boats said Christmas was spoken of and considered as one of the owners.

Affiant does not think that Wilson and H. and T. H. Christmas were able to purchase a steamboat without assistance. In the absence of Richard Christmas, one of his brothers acted and managed for him.

JAMES KELLY.

Sworn to and subscribed before me this 14th day of December, 1857. Witness my hand and official seal.

LAZ. LINDSAY. [SEAL.]

517 *Affidavit of McCormick.*

COUNTY OF HAMILTON, *City of Cincinnati, set:*

Before me, A. H. McGuffey, commissioner in Ohio, of and for the State of Kentucky, personally appeared W'm T. McCormick, of lawful age, who, being by me duly sworn, did depose and say that he was mate of the steamer Rodolph from December, 1838, until April, 1841. During all the time it was understood by me and by all the officers that Richard Christmas was the owner of the boat. He directed everything, controlled everything, and received all the money earned by the boat, and ordered and paid for all repairs. I had the Rodolph once during this time, and Richard Christmas paid the bills. I had her repaired twice, once here in Cincinnati. In the summer, 1839, I had a big repair made on the Rodolph, and in August, 1840, the Rodolph was put in the dry dock in New Orleans, and repaired, and came out in the latter part of September, 1840. Christmas was to furnish the money for both repairs. I paid the dock fee in New Orleans myself, and looked to Christmas for my money. He promised he would pay me.

In the winter of 1839 and 1840 Mrs. Wilson came on board the
518 Rodolph at the mouth of Red River. She came from the steamboat Nautilus. I believe she was carried on board the Rodolph by her husband. I remember distinctly that it was just after dark in the evening, but I cannot fix the day of the month. I remember she fainted on the Nautilus just before she came on board. Richard Christ-

mas was on board the Rodolph during this trip, to the best of my recollection. I have no doubt of his being on board that trip. He went down several times that winter, and I am satisfied he was on board that trip. I recollect distinctly another fact; it is this: that during the trip, just before Capt. Russell attached the Rodolph, Christmas wanted to have the boat given up to his creditors to pay his debts. He wanted to have done this at Vicksburg, and it was all arranged that this should be done the next trip. If Capt. Russell had not attached the Rodolph when he did, they had it all arranged that the Rodolph should be given up the next trip for Christmas' debts.

WM T. McCORMICK.

In testimony whereof I have caused said affiant hereto to subscribe his name, and now affix my signature and official seal at Cincin-
519 nati, Ohio, on this the 12th day of February, A. D. 1858.

[SEAL.] A. H. McGUFFEY,
Com'r in Ohio for Kentucky.

A. Allen's affidavit.

RUSSELL *vs.* CHRISTMAS. } Kentucky, Jefferson County court.

Alexander Allen makes oath that he was well acquainted with defendant Richard Christmas in the years 1839 and 1840, and ever since, and knows he was in Madison County, State of Mississippi, during the month of January, 1840, and up to the 11th February, 1840. The time he is *not* able to fix definitely, from the circumstances that Richard Christmas was negotiating a large trade for land and negroes with Tho's H. and Henry Christmas, in said county of Madison, which trade was of public notoriety and often talked of by affiant's family, which trade was made on the 11th day of February, 1840, by defendant *W. B. Norfleet;* and affiant distinctly recollects that Mrs. Christmas, wife of defendant, was taken violently ill at affiant's house some time in the month of January, 1840. Defendant was in daily intercourse
520 with affiant during his wife's illness and during his stay in Madison County, and defendant spent the greater portion of his leisure time at affiant's house, in Madison County, which was some two miles from the property he was trading for.

ALEX. ALLEN.

Sworn to and subscribed before me this 18th day of December, 1857.

ELISHA EASTWOOD,
J. P. Parish of Point Coupe, La.

Affidavit of Simmons.

RUSSELL *vs.* CHRISTMAS. } Kentucky, Jefferson circuit court.

I was well acquainted with Christmas in the year 1839, and 1840, and ever since; I know defendant was in Madison County, Miss., during the first part of January, 1840. This affiant recollects distinctly, from the fact that defendant paid affiant a large debt about the first part of Jan-

uary, 1840, for Thomas and Henry Christmas, say about $19,000; and I recollect afterwards having a conversation with defendant at Livingston, in said county of Madison, about the middle of the month of January, 1840, about the title of a tract of land in said county, once
521 owned by defendant, and at that time owned by affiant. At this interview defendant explained the title to affiant's entire satisfaction, which affiant was very uneasy about. At the time defendant was trading with Tho's H. and Henry Christmas, in Madison County, Miss., for a tract of land and negroes, in said county, which trade defendant did make, in connection with W. B. Norfleet, on the 11th February, 1840, as I see by copies of deeds, and I recollect it was then about the 1st February, of my own recollection; these facts enable me to fix dates.

JOHN SIMMONS.

Sworn to and subscribed before me this eighth day of January, A. D. 1858.

JOSEPH A. YOUNG, [SEAL.] *J. P.*

Affidavit of P. Fern.

RUSSELL *vs.* CHRISTMAS. } Kentucky, Jefferson circuit court.

I was well acquainted with R. Christmas in the year 1839, and 1840, and ever since, and know he was in Madison County, Mississippi, the last of January, 1840. The time I am able to fix from the circumstance that I was employed in the fall of 1839, by defendant, to make a canal of several miles' length on his plantation, in Warren County, Mississippi, to
522 his overshot *in* and mill, just completed by defendant, for which defendant agreed to pay affiant a stipulated price, and pay monthly for the amount of work done, so as to enable affiant to pay his hands, who he had by the month, all of which contract was complied with by defendant, by payment in person, except the month of January, 1840, during which time he was absent; and on the last of January, 1840, he sent me, by a servant, inclosed in a letter directed to his overseer, John Snow, the sum of $200, from Madison County, Mississippi, which letter Snow read me, and handed me the money, the amount being much less than was due me monthly; and being unable to settle with my hands, most of them quit, causing affiant much trouble and vexation. On or about the 15th of February, 1840, defendant returned from Madison County to Warren County, and settled with me in full.

his
PETER + FEARN.
mark.

Sworn to and subscribed before me this 4th day of January, 1858.

L. R. HOUGHTON.

Thomas H. Christmas.

RUSSELL *vs.* CHRISTMAS. } Kentucky, Jefferson circuit court.

523 This day personally appeared before the undersigned, William S. Cook, acting J. P. in and for the county of Bolivar, Missis-

sippi, Thomas H. Christmas, who makes oath that he is the brother of defendant in the above-stated cause; that he was in close communication with defendant in the years 1839 and 1840, and ever since; that he knows that the defendant was in the county of Madison, Mississippi, during the entire month of January, 1840, a fact within the positive knowledge of affiant, and in which he cannot be mistaken. The following circumstances, a portion of the many reasons whereby affiant is able to speak with more than ordinary confidence relative to a circumstance so long elapsed, to wit: Defendant, with his family, came to the county of Madison on the last day of December, 1839, and stopped at the house of Alexander Allen, in said county of Madison, Mississippi. Affiant lived but a few miles from Allen's. On the first day of January, 1840, defendant came to affiant's house, and on that day, in behalf of himself and partner, William B. Norfleet, contracted with affiant and his brother Henry Christmas for the purchase of a large tract of land, and some 80 negroes, the said property being in Madison County, Mississippi. This trade was not carried into effect until the 11th
524 February, 1840, between which periods affiant was in daily intercourse with defendant. On or about the 15th day of January, Mrs. Christmas, wife of defendant, was taken violently ill, at the house of Alexander Allens, residing in said county with affiant at that time, to wit, the county of Madison aforesaid. Affiant was summoned to her place of sickness, and for several days her life*time* was almost despaired of. Affiant and defendant were in daily attendance on her, affiant residing a few miles from Allen's. Affiant points with certainty to the period from various circumstances, and among others he recalls one or two tending to refresh his memory. On the 18th and 19th January, 1840, General Andrew Jackson was in the city of Jackson, Mississippi, the invited guest of the State; a circumstance in the history of that city which affiant well remembers, as well as the time when, and consultation with the journals of that day published, affiant finds his recollection entirely correct. Affiant was much disappointed in not being able to see his favorite chief at the time mentioned, on account of the severe illness of his sister, defendant's wife. Affiant remained
525 with defendant's sick wife during this time, and on the 26th day of January, 1840, I wrote an order to defendant for $500; the order I sent to defendant by a slave boy called Leroy, to the defendant, still remaining at Allen's house with his sick wife. The boy returned with the money, and on the 11th day of February, 1840, when the trade was closed, the money was settled for by me, neglecting, however, to take up the order, which defendant found some five days since among his papers, which I attach and make part of this affidavit, and mark "M." I know defendant did pay one John Simmons a large debt for affiant and Henry Christmas, amounting to about $19,000, some time between first and middle of January, 1840, in said Madison County, Mississippi. Affiant states it's impossible that defendant could have visited New Orleans in the month of January, 1840, and up to the 11th February, same year, with affiant's knowledge; *or* have visited said city by the most speedy mode of time at that day would have required an absence of at least five days; this without allowance for detention any way whatsoever, embracing only the time of travel; with the usual
526 incidents delays of a journey, the time estimated would be at least double the above time. From all the above and foregoing facts to which affiant's memory points, refreshed by memorandum papers, which place the question, in affiant's mind, beyond doubt, and from the fact that affiant was daily and almost hourly intercourse and correspond-

ence with defendant during the said month of January, 1840, affiant unhesitatingly states defendant was not, at any time during the month of January, 1840, and up to the 11th February, same year, in the city of New Orleans, but during said period was, in the positive of affiant, in , county of Madison, State of Mississippi.

THOMAS H. CHRISTMAS.

MISSISSIPPI, *Bolivar County:*

Subscribed and sworn to by Thomas H. Christmas, before me, this 3rd day of February, 1858.

W'M S. COOK, *J. P. B.*

C. W. Allen.

RUSSELL *vs.* CHRISTMAS. } Jefferson County, Kentucky circuit court.

C. W. Allen makes oath that he was well acquainted with Richard Christmas, the defendant, in the years 1839 and 1840, and ever
527 since, and knows that he was in Madison County, Mississippi, on the 30th day of January, 1840, and was there some weeks before and after that time; and the reason that he is able to fix the date is, because that day he wrote a letter at his plantation, in said county of Madison, to defendant, who was at that time on the plantation of Henry Christmas, in said county of Madison, requesting defendant to pay W'm McMurtry and John G. Ott $500, which defendant paid according to request—McMurtry and Ott were residing at that time in said county of Madison—which letter is hereto attached, and made a part hereof. As an additional why the affiant is certain that the defendant was in said county before and after the said day, he well remembers that defendant and W. B. Norfleet purchased a tract of land and negroes from Thomas H. and Henry Christmas, who executed a deed to them, and to secure the purchase-money retained a mortgage on the 11th February, 1840, and this affiant was a witness to the deed; certified copies of said deed and mortgage are hereto attached, and made a part hereof. And for a further reason, this affiant well knows that defendant, before and after 30th January, 1840, was negotiating said trade, in which it
528 was a condition that defendant should assume the payment of a large debt due by Thomas H. and Henry Christmas to John Simmons, who lived Allotta County, Mississippi, but who owned a plantation in Madison County. Defendant had much difficulty and delay in arranging said debt; often talked to affiant about the trade, and his difficulties, and affiant often talked to Simmons about arranging the debt; and while defendant was in Madison County, negotiating this trade, defendant remained the greater part of his time in affiant's house, so that affiant was in almost daily intercourse with defendant during his stay in Madison County, say from the 1st day of January, 1840, to the 11th day of February, 1840.

C. W. ALLEN.

STATE OF LOUISIANA, *City of New Orleans:*

I, W'm Shannon, a com'r of the State of Kentucky, in and for the city of New Orleans, State of Louisiana, duly commissioned and qualified, do hereby certify that C. W. Allen appeared before me and signed

the above document, and made oath that the statements therein contained are true, to the best of his knowledge and belief.

529 In faith whereof I have herunto signed my name, and affixed an impress of my official seal at New Orleans, this 14th day of December, A. D. 1857.

[SEAL.] W'M SHANNON, *Commissioner.*

Letter referred to.

PLANTATION, 30*th Jan.*, 1840.

R. CHRISTMAS.

DEAR SIR: Mr. Perkins would not pay your order, having *an assetts*, and for further reasons. This has put me to some inconvenience; please leave $500 with Mr. McMurtrie and John G. Ott, and much oblige yours,

CHA'S W. ALLEN.

Deed and mortgage referred to.

Christmas and Christmas, deed—Christmas and Norfleet.

Received for record 15th, and recorded 29th Feb., 1840.

This indenture, made and entered into this 11th day of February, A. D. 1840, between Henry Christmas, and Ann D. Christmas, his wife, of the county of Madison, and State of Mississippi, and Thomas H. Christmas, of the same county and State, of the one part, and Richard Christmas, of Warren County, and William B. Norfleet, of the same county and State aforesaid, of the other part, witnesseth that said Henry Christmas and wife, and Thomas H. Christmas, for and in consideration of the sum of $80,000 to them in hand paid, at and before the

530 sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell, unto the said Richard Christmas and W'm B. Norfleet, and their heirs and assigns forever, a certain tract or parcel of land situate, lying, and being in the county of Madison aforesaid, being the same land which is embraced in the following subdivisions, to wit: The south half of section 35, in township "*G*," range 1 east; section 2; the west half of N. W. quarter of section 1, the west half of S. W. quarter of section 1, the east half of section 10, and 95 acres in section 4, in township 8, range 1 east, bounded on the south side by the southern boundary of said section 4, and extending *south* in said section, containing in all 1,535 acres, be the same more or less, with the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, and title of them, the said Henry Christmas and wife, and Thomas H. Christmas, of, in, and to the same, and every part and parcel thereof. And for the same consideration the said Henry Christmas and Thomas H. Christmas have bargained, sold, and delivered, and by these presents do sell and

531 deliver, unto the said Richard Christmas and W'm B. Norfleet, and to their heirs and assigns forever, the following , with the increase of the females, to wit:

Adam.....	about	25	years	of age.	Anderson ..	about	25	years of age.
Cudjo.....	"	25	"	"	Jim.....	"	30	" "
Henry	"	30	"	"	Davy.....	"	35	" "
Reuben	"	30	"	"	Albert	"	25	" "

Mark	about	45	years	of age.	John	about	20	years of age.
Aaron	"	25	"	"	Aaron	"	20	" "
Pomp	"	25	"	"	Jerry	"	30	" "
Billy C	"	30	"	"	Henry	"	22	" "
Mingo	"	25	"	"	Cato	"	18	" "
Robert	"	25	"	"	Noah	"	30	" "
Jesse	"	35	"	"	Ned	"	35	" "
Moses	"	25	"	"	Paul	"	35	" "
Edmond	"	45	"	"	Daniel	"	16	" "
Charles	"	15	"	"	Isaac	"	12	" "
Shade	"	12	"	"	Granville	"	14	" "
Dick	"	15	"	"	John	"	22	" "
Ben	"	13	"	"	Tom	"	20	" "
Peter	"	16	"	"	Ned	"	18	" "
Stump	"	25	"	"	Billy	"	25	" "
Rives	"	30	"	"	Will	"	30	" "
Spencer	"	30	"	"	Sarah	"	18	" "
Maria	"	28	"	"	Mary	"	20	" "
Mahala	"	20	"	"	Cloe	"	20	" "
Ann	"	25	"	"	Lydia	"	18	" "
Mary	"	16	"	"	Abby	"	20	" "
Maria	"	27	"	"	Hannah	"	20	" "
532 Ann	"	20	"	"	and her child.			
Viney	"	20	"	"	Harriett	"	25	" "
Celia	"	15	"	"	Peggy	"	18	" "
Caroline	"	24	"	"	Eliza	"	16	" "
Dolly	"	18	"	"	Mary	"	18	" "
Eady	"	14	"	"	Emily	"	14	" "
Caroline	"	16	"	"	Jane	"	25	" "
Betsey	about	16	years	of age.	Dorcas	about	20	years of age.
Emily	"	10	"	"	Frazier	"	8	" "
Julia	"	20	"	"	and her child.			
Aggy	"	45	"	"	Susan	"	16	" "
Julia Ann	"	10	"	"	Esther	"	6	" "
Blount	"	4	"	"	Jackson	"	9	" "
Mingo	"	12	"	"	Hagar	"	5	" "

and Washington, about 5 years of age.

Also 32 head of mules and six horses, and stock of cattle and hogs, farming utensils, wagons and carts, the corn and fodder, oats and bacon, and blacksmith's tools, on or connected with the plantation on the land and premises hereby sold and conveyed, and the household and kitchen now in the dwelling-house on the premises, and one pleasure-carriage:

To have and to hold the land and premises hereby conveyed, with the hereditaments and appurtenances thereunto belonging or in any
533 wise appertaining, and the negroes and other property before mentioned, with the increase of the females of the negroes aforesaid, unto them, the said Richard Christmas and W'm B. Norfleet, their heirs and assigns, to his and their only proper use, benefit, and behoof. And the said Henry Christmas and wife, and Tho's H. Christmas, for themselves, their heirs, executors, administrators, hereby covenant, agree to and with the said Richard Christmas and W'm B. Norfleet, their heirs and assigns, that the before described land and bargained premises against the claim or claims of all and every person or persons whatsoever, unto the said Richard Christmas and W'm B. Norfleet, their

heirs and assigns, they do and will warrant and forever defend by these presents. And the said Henry Christmas and Thomas H. Christmas hereby covenant and agree, to and with the said Richard Christmas and W'm B. Norfleet, their heirs and assigns, that the negroes aforesaid are sound, sensible, and healthy, and slaves for life.

In testimony whereof the said Henry Christmas, his wife, and Thomas H. Christmas have hereunto set their hands and seals the day and year above written.

H. CHRISTMAS. [SEAL.]
THO'S D. CHRISTMAS. [SEAL.]
ANN D. CHRISTMAS. [SEAL.]

Signed, sealed, and delivered in presence of—
CHA'S W. ALLEN.
A. G. BENNETT.

534 STATE OF MISSISSIPPI, *Madison County:*

Personally appeared before me, a justice of the peace of said county, the within-named Henry Christmas and Tho's H. Christmas, who acknowledged that they signed, sealed, and delivered the foregoing deed of conveyance to the said Richard Christmas and W'm B. Norfleet, on the day and year therein named, as their act and deed; and at the same time and place personally appeared before me, also, Ann D. Christmas, wife of said Henry Christmas, and, being by me examined privately and separately and apart from her said husband, she acknowledged that she had signed, sealed, and delivered the foregoing deed of conveyance to the said Richard Christmas and W'm B. Norfleet, freely and voluntarily, without any fear, threats, or compulsion from her said husband, on the day and year therein mentioned, as her voluntary act and deed.

Given under my hand and seal this 13th day of February, 1840.

WILL. DE HART. [SEAL.] *J. P.*

STATE OF MISSISSIPPI, *Madison County, sct:*

I, John T. Cameron, clerk of the probate court of said county, hereby certi the foregoing instrument to be a true transcript from the
535 records of my office, book of deeds, 429, 430, and 431.

Given under my hand and seal of office, at Canton, this 8th day of February, A. D. 1843.

[SEAL.] JOHN T. CAMERON, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County, sct:*

I, Andrew B. Dodd, clerk of the probate court of said county, do certify that the within and foregoing deed of conveyance and certificates were, on the 21st day of March, 1843, filed in my office for record, whereupon I have the same of record in Book of Deed B, pages 465, 466, 467, and 468.

Given under my hand and private seal (there being no seal of office) this 26th day of April, A. D. 1843.

A. B. DODD, *Clerk.*

Mortgage referred to.

Christmas and Norfleet, deed, trust—Christmas and Christmas.

Received for record 27, and recorded 29th February, 1840.

This indenture, made and entered into this 11th day of February, A.

D. 1840, between Richard Christmas, and Mary E., his wife, of the county of Warren, and State of Mississippi, and W'm B. Norfleet, of the county of Madison, and State aforesaid, of the one part, and Henry Christmas and Thomas H. Christmas, of the county of Madison, and State aforesaid, of the other part, witnesseth that whereas the said Richard
536 Christmas and W'm B. Norfleet are justly indebted to the said Henry Christmas and Thomas H. Christmas in the sum of $60,392 60 cts., for which they have executed and delivered their seven several promissory notes, bearing even date with these presents, as follows, to wit: two for the sum of $6,500, payable to the said H. and T. H. Christmas, or order, on or before the 1st day of March, in the year 1841, negotiable and payable at the Commercial Bank at New Orleans; two for the sum of $6,500, payable in like manner as the last, on or before the 1st day of March, in the year 1842; one other for the sum of $13,000, negotiable and payable as aforesaid, on the 1st day of March, 1843; one other for the sum of $13,000, negotiable and payable as aforesaid, on or before the 1st day of March, 1844; and one for the sum of $8,392 60 cts., negotiable and payable as aforesaid, on or before the 1st day of March, 1845; all of which notes are written on the face thereof, "Secured by mortgage on real estate and slaves;" and the said Richard Christmas and W'm B. Norfleet are anxious and desirous to secure the punctual payment of the said seven promissory notes, as they respectively fall and become due:

Now, therefore, this indenture witnesseth that the said Richard Christmas and W. B. Norfleet, for and in consideration of the
537 premises, and for the further consideration of $10 to them in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and, by these presents, do give, grant, bargain, and sell, unto the said Henry Christmas and Thomas H. Christmas, and to their heirs and assigns forever, a certain tract or parcel of land situate, lying, and being in the county of Madison aforesaid, being the same land which is embraced within the following subdivisions, to wit: the south half of sec. 35, in township 9, range 1 east; sect. two; the west half of the northwest quarter of section 1, the west half of the southwest quarter of section 1, the east half of sect. 10, and 95 acres in sect. 4, in township 8, range 1 east, bounded on the south side by the southern boundary of said sect. 4, and extending north in said section, containing in all 1,535 acres, be the same more or less, with the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, and title of them, the said Richard Christmas and wife, and W'm B. Norfleet, of and to the same, and every part and parcel thereof, and all the rents, issues, and profits thereof.
538 And for the like and this same consideration the said Richard Christmas and W'm B. Norfleet have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Henry Christmas, H. Christmas, the following negroes, slaves for life, and their increase, to wit:

Adam	20 years of age.	Anderson	25 years of age.
Cudjo	25 " "	Jim	30 " "
Henry	30 " "	Davy	25 " "
Reuben	30 " "	Albert	22 " "
Mark	45 " "	Aaron	20 " "
Aaron	35 " "	Jerry	30 " "
Pomp	20 " "	Henry	22 " "

Billy C	30	years	of age.	Cato	18	years	of age.
Mingo	25	"	"	Noah	30	"	"
Robert	25	"	"	Ned	35	"	"
Jesse	35	"	"	Paul	35	"	"
Moses	25	"	"	Daniel	16	"	"
Edmond	45	"	"	Isaac	12	"	"
Charles	15	"	"	Granville	14	"	"
Shade	12	"	"	John	22	"	"
Dick	15	"	"	Tom	20	"	"
Ben	13	"	"	Ned	18	"	"
Peter	16	"	"	Billy	25	"	"
Stump	25	"	"	Will	30	"	"
Rives	30	"	"	Sarah	18	"	"
Spencer	30	"	"	Mary	20	"	"
Maria	28	"	"	Cloe	20	"	"
539 Mahala	20	years	of age.	Lydia	18	years	of age.
Ann	25	"	"	Abby	20	"	"
Mary	16	"	"	Hannah	20	"	"
Maria	27	"	"	and her child.			
Ann	20	"	"	Nelly	20	"	"
Viney	35	"	"	Celia	15	"	"
Harriett	25	"	"	Caroline	24	"	"
Peggy	18	"	"	Dolly	18	"	"
Eliza	16	"	"	Eady	14	"	"
Mary	18	"	"	Caroline	16	"	"
Emily	14	"	"	Betsey	16	"	"
Jane	25	"	"	Emily	10	"	"
Dorcas	20	"	"	Julia	20	"	"
Frazier	8	"	"	and her child.			
Aggy	45	"	"	Susan	16	"	"
Julia Ann	10	"	"	Esther	6	"	"
Blount	4	"	"	Jackson	9	"	"
Mingo	12	"	"	Hagar	6	"	"
John	20	"	"	Washington	5	"	"

Also 32 head of horses and mules, and the stock of cattle and hogs, farming utensils, wagons and carts, and blacksmith's tools, on or connected with the plantation, on the land and premises hereby sold and conveyed, being the same land and negroes, and a portion of the other property, which, by a deed of bargain and sale bearing even date with these presents, was conveyed by the said Henry Christmas and
540 wife, and Thomas H. Christmas, to said Richard Christmas and W'm B. Norfleet. And the object of this conveyance is to secure to the said Henry and Thomas H. Christmas, and their heirs and assigns, the payment of the debt aforesaid from the profits of the plantation and the negroes aforesaid; and said Richard Christmas and W'm B. Norfleet now agree to appropriate the said profits to the said object:

To have and to hold the said land and premises hereby bargained and sold, with the hereditaments and appurtenances thereunto belonging or in any wise appertaining, with the rents, issues, and profits thereof, and the negroes and other property aforesaid, with the increase of the females of said negroes, and all the profits, production, and produce of the labor of the said negroes, unto them, the said Henry Christmas and Thomas H. Christmas, their heirs and assigns, to their and their only proper use and benefit and behoof forever:

Provided, however, and this conveyance is made on condition that

should the R'd Christmas and W'm B. Norfleet well and truly pay the sum of money aforesaid, and each and every part thereof, when *and* each of the promissory notes aforesaid fall and become due, and all cost,
541 interest, and charges which may accrue thereon, then and in that *count* this conveyance shall be void, and the estate thereby conveyed shall cease and be determined; otherwise to be and remain in full force and effect.

In testimony whereof the said Richard Christmas, and Mary E., his wife, and William B. Norfleet, have hereunto set their hands and seals the day and year first above written.

R'D CHRISTMAS. [SEAL.]
W'M B. NORFLEET. [SEAL.]
MARY E. CHRISTMAS. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF MISSISSIPPI, *Madison County:*

Personally appeared before me, a justice of the peace, the within-named W. B. Norfleet, who acknowledged that he signed, sealed, and delivered the within deed of mortgage and conveyance to the said Henry and Thomas H. Christmas, on the day and year therein specified, for the purposes therein named, as his act and deed.

Given under my hand and seal this 25th day of February, 1840.

[SEAL.] WILL. D. HART,
Justice of the Peace.

THE STATE OF MISSISSIPPI, *Warren County:*

Personally appeared Richard Christmas before me, Edward
542 R. Warren, an acting justice of the peace, and ex-officio notary public for said county, and acknowledged that he signed, sealed, and delivered the within deed of mortgage and conveyance on the day and year therein named, and for the purpose therein specified, as his act and deed. Also personally appeared Mary E. Christmas, wife of the said Richard Christmas, before me, Edward R. Warren, an acting justice of the peace, and ex-officio notary public as aforesaid; and being by me privately examined, separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the within dead of conveyance and mortgage as her voluntary act and deed, without any fear, threats, or compulsion of her said husband, on the day and year therein named, and for the purposes therein specified.

Given under my hand and seal this the 22d day of February, 1840.

[SEAL.] EDWARD R. WARREN,
Justice of the Peace and Ex-officio Notary Public.

Affidavit of W. A. Lake.

RUSSELL *vs.* CHRISTMAS. } Kentucky, Jefferson circuit court.

William A. Lake states, on oath, that he is acquainted with the character of Thomas H. Christmas, Hugh M. Markham, A. M. Young,
543 C. W. Allen, Alexander Allen, and John Simmons; that from his knowledge of the above-named persons he would believe them, and believes that any statements made by them is entitled to credit

W. A. LAKE.

Sworn and subscribed before me this 16th February, 1858.

L. S. HOUGHTON,
Justice of the Peace.

A. Burnett's affidavit.

STATE OF MISSISSIPPI, *Warren County, ss:*

RUSSELL *vs.* CHRISTMAS. } In Jefferson circuit court, Kentucky.

Personally appeared before me, Lawrence S. Houghton, a justice of the peace of said county and State, A. Burnett, who states, on his oath, that he is acquainted with the character of Thomas H. Christmas, Hugh M. Markham, A. M. Young, C. W. Allen, and John Simmons; that, from his knowledge of the above-named persons, he would believe them and believes that any statements made by them are entitled to credit.

A. BURNETT.

Sworn and subscribed before me this 16th day of February, 1858.

L. S. HOUGHTON,
Justice of the Peace.

544 *Affidavits of A. M. Young and H. M. Markham.*

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before L. S. Houghton, an acting justice of the in and for the county and State aforesaid, Alfred M. Young and Hugh M. Markham, who, first being duly sworn, states that they have known John R. Davis, of New Orleans, for several years; that his character for truth and veracity is bad—very bad; and that they would not believe him on oath.

A. M. YOUNG.
H. M. MARKHAM.

Sworn and subscribed before me this 5th day of February, A. D. 1858.

L. S. HOUGHTON,
Justice of the Peace.

STATE OF MISSISSIPPI, *Warren County, ss:*

I, Lawrence S. Houghton, an acting justice of the peace in and for the county and State aforesaid, do certify that I am well acquainted with the standing and character of Alfred M. Young and Hugh M. Markham, whose names are subscribed above; and that their character for truth and veracity is good and unimpeachable.

Witness my hand this 5th day of February, 1858.

L. S. HOUGHTON,
Justice of the Peace.

545 STATE OF MISSISSIPPI, *Warren County:*

I, Lawrence S. Houghton, an acting justice of the peace in and for the county and State aforesaid, do certify that I am well acquainted with Charles W. Allen, Alfred M. Young, Thomas H. Christmas, and Richard Christmas, and have known all of them for several years, and

that their general character for truth and veracity is always has been good, and I would unhesitatingly believe them on their oaths.

In testimony whereof I have hereunto set my hand and seal this 4th day of February, 1858.

L. S. HOUGHTON. [SEAL.]

Deposition of William Fleming.

STATE OF LOUISIANA, *City of New Orleans:*

Deposition of William Fleming, taken on the 29th day of January, 1858, in the office of William Christy, in the city of New Orleans, State of Louisiana, aforesaid, &c., who deposes as follows:

That I was a pilot on the steamer Rodolph a portion of the years 1838 and 1839 and 1840, and up to the time of the seizure of the said boat in New Orleans; that I frequently saw Richard Christmas travelling on said boat; that it was understood and believed by the
546 officers of the boat, himself among them, that the said Christmas was the owner or part owner of the boat, and he was treated as such; and I have a perfect recollection of seeing him on board before I left the boat, in 1840. I was well acquainted with the late William A. Wilson in the years 1838, 1839, and 1840; looked upon him as a man of limited means, so much so as to be unable to have purchased a steamer of the value of the Rodolph. I am of this opinion, because it was the habit of those in the steamboat business to communicate freely with *such* other about their business affairs.

W. M. FLEMING.

STATE OF LOUISIANA, *City of New Orleans:*

I, W'm T. Christy, commissioner of deeds for the State of Kentucky, duly appointed by the governor thereof for the State of Louisiana, and authorized to certify depositions, do hereby certify that the foregoing deposition of W'm M. Fleming was taken before me at the time and place, and for the purposes named in the caption thereof; that the said W'm M. Fleming was duly sworn by me before he gave his testimony; that the evidence he should in the action named should be the
547 truth and nothing but the truth, and thereupon testified as shown in the foregoing deposition by him subscribed; the statements of the witness being reduced to writing by me, and read to him and subscribed by him in my presence. And I further certify that none of the parties to the aforesaid cause were present at the taking of this testimony except John W. Russell, one of the plaintiffs, and that about the time of closing this deposition the defendant R'd Christmas came with his counsel, Levi Price, esq., and asked permission to read the several depositions taken and being taken before me in the above-named case, and that he was answered by the said Russell that he could not suffer him to see or read said depositions, unless he, Christmas, would show him, Russell, all the ex parte depositions he had taken in the case, to which Christmas replied that they were not in his possession, he having sent them to Louisville, where the cause is pending. Christmas and his counsel then left, and I, said commissioner, continued and closed the examination of the said witness.

Given under my hand and official seal, at the city of New Orleans, on this 29th day of January, A. D. 1858.

W'M CHRISTY,
Commissioner of Ky., in La.

Fee, $10, paid by plaintiff.

548 *Deposition of J. R. Davis.*

STATE OF LOUISIANA, *City of New Orleans:*

Deposition of Jno. R. Davis, taken on the 29th day of January, 1858, in the office of W'm Christy, in the city of New Orleans, La., aforesaid, sworn, &c., says:

I was residing in Vicksburg, Mississippi, in the years 1838, '39, and '40. I was at that time well acquainted with the reputed owner and officer of the steamer Rodolph; in the latter part of the year 1839, *Mr.* A. Wilson was the active or acting captain of the said boat, as he continued to be up to the time of her seizure in New Orleans, say in the spring of 1840. During this time it was understood by the public, as well as by myself, that the said boat was owned by the said R'd Christmas, in whole or in part, he having control of said boat. I was at the time aforesaid engaged in what was called the steamboat business, such as furnishing supplies, &c., to steamboats, which business made it necessary to board every boat landing at the wharf, which gave me an opportunity of becoming acquainted only with the officers, but with the owners of steamers generally. In this connection I understood distinctly that the said steamer Rodolph was owned by R'd Christmas, and under
549 this impression I furnished supplies to the said boat from time to time, believing him to be good for the amount of my bills in case the boat should not be so. I was personally acquainted with R'd Christmas at the time, and am now acquainted with him, and know that he travelled on said boat at the time specified. I was well acquainted with the late W. A. Wilson from 1836 to 1840 and to the time of his death; that in the crisis of 1836 and 1837 he, Wilson, failed in business in Manchester, Miss., and I never heard or knew of acquiring sufficient property after his failure to enable him to purchase a steamer of the value of the Rodolph, or any other boat; and from my intimacy with the said Wilson and his family, I am very sure I am correct in my estimate of his, the said *William's*, means, the said Wilson and his wife having frequently made my house their home when in Vicksburg.

J. R. DAVIS.

The commissioner's certificate of attestation to the above deposition is in due form.

Deposition of Charles S. Miller.

STATE OF LOUISIANA, *City of New Orleans:*

Deposition of Charles S. Miller, taken on the 29th day of January,
550 1858, in the office of W'm Christy, in the city of New Orleans, La., says:

Question by J. W. Russell, in person. Were you or not deputy U. States marshal under your late father, Anderson Miller, for the State of Mississippi, during the years 1841 and 1842?

Answer. I was.

2d. Do you or not know that many executions, for large amounts, were issued against R'd Christmas from the circuit court of the U. S. for the southern district of Mississippi, which were returned "nulla bona?"

Ans. I do; that is, I know, as deputy marshal as aforesaid, that these writs or executions were issued during the years 1841 and '42.

3rd. Were you not one of the clerks on board the steamer Rodolph the latter part of the year 1838 and the early part of 1839?

Ans. I was.

4th. Do you or not know that the said steamer was owned by the said R'd Christmas at the time you were acting as clerk aforesaid?

Ans. Such was my impression, for I understood he had purchased the said boat from John W. Russell and Churchill Samuel.

5th. Did you or not often see R'd Christmas on board said steamer at the time you were acting as clerk aforesaid, and was he not rec-
551 ognized by the officers generally as the owner of the boat?

Ans. Yes.

CHA'S S. MILLER.

The certificate of attestation of the commissioner to the above is in due form.

C. B. Church.

STATE OF LOUISIANA, *City of New Orleans:*

The deposition of Cha's B. Church, taken on the 1st day of February, A. D. 1858, in the office of W'm Christy, in the city of New Orleans, State of La., to be read, &c., sworn, &c., says:

In the fall of 1838 I was employed on board the steamer Rodolph as engineer, at the instance of R'd Christmas, who informed me that he had purchased said steamer from Capt. J. W. Russell, and several thousand dollars were furnished me to pay for the repairs of the boat at Cincinnati, which I placed in the hands of H. M. Ryan, who acted as agent of the boat; accordingly I proceeded to Cincinnati and repaired the boat; and when these repairs were nearly completed, as I supposed, T. H. Christmas and others of the Christmas came on board and objected to the plain manner in which the boat was being furnished, and requested or directed that furniture of a fine quality should be
552 procured, when I placed the matter in the hands of the said Ryan, who procured new furniture, which, with the other affairs, were said to have cost 15 or $16,000. I know that the Christmasses raised the funds to pay for these repairs, furniture, &c., by drafts. I also know that the Christmasses all took an active part in the direction of the repairs of the boat, as well as in the furnishing said boat. I also know that the said Christmasses frequently travelled on said boat after she was repaired. I quit this steamer in May or June, 1839.

CHA'S B. CHURCH.

The certificate of attestation by the commissioner to the above deposition is in due form.

T. B. Winston.

The deposition of Thomas B. Winston, taken on the first day of February, A. D. 1858, in the office of W'm Christy, in the city of New Orleans, La., to be, &c., &c., sworn, says:

I kept a grocery store, in 1841, in the city of New Orleans, and was in the habit of supplying steamboats with such supplies in my line as they usually used. To the best of my recollection (my books having been burned) the steamer Rodolph owed me for supplies in the spring of 1841 the sum of $300 41; and I am brought more particularly
553 to this recollection by refreshing my memory by reference to a memorandum to which I have referred, which amount was settled by Capt. John W. Russell.

THO'S B. WINSTON.

The certificate of attestation by the commissioner to the above deposition is in due form.

The following is the affidavit of R. Christmas, filed in the foregoing cause, to wit:

Affidavit of R. Christmas.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, L. S. Houghton, an acting J. P. and ex-officio notary public in and for said county and State, R. Christmas, who, being duly sworn, says under oath that he is the defendant in a certain suit pending in the circuit court of Jefferson county, Ky., wherein John W. Russell is plaintiff, he, affiant is defendant; that in the motion now pending in said cause for a new trial, John R. Davis, now of New Orleans, and formerly of Vicksburg, was busily engaged in said city of New Orleans, La., in getting up the testimony by way of ex parte affidavits for said plaintiffs, and he is satisfied, if time is allowed him by said court, he can disprove the whole of it taken in New Or-
554 leans; that he is satisfied that he can prove from the actions and conduct of the said John R. Davis that he hunted up the witnesses and told them what to swear to; that he can prove that said Jno. R. Davis is not to be believed under oath; that he applied to W'm Christy, the notary public, before whom said ex parte affidavits or depositions were taken in New Orleans, on the 28th and 29th of January, A. D. 1858, to cross-examine the witnesses for said plaintiff Russell, but the plaintiff and said notary public refused to allow him to do so. He requested said notary to make him a minute on the record of the evidence (M. Pearce, his attorney, being also present) in said cause of his application and said *reproval*, which the notary promised to do, but whether he did so or not the affiant is not informed; he is satisfied that if he had had an opportunity so to cross-examine said witnesses, he could have wholly invalidated their statements; that said John R Davis, who had testified or given his affidavit in said cause, told affian he knew nothing about the cause, and would not testify on it, yet his testimony was, at the time, more than half taken. Affiant procured a police officer of said city of New Orleans, by the name of John Andrew Ross, to watch said Davis, to find out when and where he would
555 testify in said cause, and what efforts said Davis was making to hunt up testimony therein, and also understood from his friend Col. A. M. Young, that said Davis endeavored to mislead and deceive said Young as to what Young was about to swear to in said cause, and tried to plase a false construction on what he, Young, would swear to. These causes, and information from said police officer, induced said affiant to believe that said *Davis, if possible to procure* false testimony in said cause. Whether he has succeeded in doing so or not, affiant does not know, because he cannot learn what has been sworn to herein. He is satisfied that if time is allowed him, he will be able to prove the above facts, and many others, going to show that Davis was employed by some one to get up affidavits in said cause, as well as to procure others to swear falsely therein. *The* facts he can prove on said Davis, as he believes, from the earnest and active manner of Davis in getting parties to swear, and the devices, false statements, and deception used by said Davis to him in relation thereto. He has been informed one Fleming, whose affidavit was taken in New Orleans in said cause on the 28th of February, 1858, swore that affiant was the reputed owner of the

556 steamer Rodolph in the year 1840. Affiant can wholly disprove that he was owner at that time, and that he had an interest therein at the time. Said Davis also deceived said affiant as to the name and occupation of said witnesses Fleming, and without the aid of watching of said police officer he would not have been enabled to know the above facts, such was the deception and artifice of the said Davis in the premises. He has not seen or ascertained what said parties swore to, although he *was* endeavored in person, and since by telegraph, to do so. The above statements are not furnished on his own knowledge altogether, but from statements derived from those in whom he has confidence, and his own knowledge.

R. CHRISTMAS.

Sworn to and subscribed before me this 6th day of February, A. D. 1858.

L. S. HOUGHTON, *J. P.*

Affidavit of J. W. Russell.

Jefferson circuit court.

Affiant says that at the last trial of this cause he had summoned as a witness Z. M. Shirley, who was in attendance, to prove that Churchill Samuels was a good business man; that W. A. Wilson, although a clever young man, was unable to purchase such a steamboat as the
557 Rodolph; that he had no visible effects; and that, from his knowledge of Churchill Samuel as a business man, he would not, in his judgment, in 1838 or 1840, have released R. Christmas from a debt of 5 or $6,000, and take said Wilson for the debt. He says that the affidavit of Tho's N. Lindsey for a continuance of this cause, at the term at which he was tried, was in the papers of this cause when we went to trial, and the same had been in the papers from its date. He also expected to prove by Shirley that the usual wages for captains of steamboats in the years 1839 and 1840 were $125 per month.

JOHN W. RUSSELL.

Subscribed and sworn to by John W. Russell this 23d February, 1858.

W'M F. BARRETT, *N. P.*

D. Steele's affidavit.

STATE OF MISSISSIPPI, *Warren County, ss:*

Personally appeared before me, L. S. Houghton, a J. P. of the county and State aforesaid, David Steele, to me personally well known, who, being first duly sworn according to law, states that he has known John R. Davis, of New Orleans, La., for several years; that his character for truth and veracity is bad, very bad; and that he would not believe him (said Davis) on oath.

DAVID STEELE.

558 Sworn to and subscribed before me this 5th day of February, A. D. 1858.

L. S. HOUGHTON, *J. P.*

MISSISSIPPI, *Warren County, ss:*

I, L. S. Houghton, an acting J. P. of said county and State, do here-

by certify that I am well acquainted with the above-named David Steele, and that his character for truth and *and* veracity is good and unimpeachable.

Witness my hand this 5th day of February, A. D. 1858.

Fee, 50 cents, paid by defendant.

L. S. HOUGHTON, *J. P.*

Affidavit of A. Norton and A. Kelly.

The following is the affidavit of A. Norton and A. Kelly, to wit:

STATE OF LOUISIANA, *City of New Orleans:*

Personally appeared before me Alexander Norton and Archibald Kelly, both of the city of New Orleans, to me personally known, who, being first duly sworn by me, made oath that they have known John R. Davis for several years; that his reputation for truth and veracity is bad; and that they would not believe him, the said John R. Davis, under oath.

ALEXANDER NORTON.
A. KELLY.

Sworn to and subscribed before me, William Shannon, a commissioner of the State of Kentucky in and for the city of New Orleans,
559 Louisiana.

In faith whereof I hereunto sign my name and affix an impress of my official seal this 28th day of January, A. D. 1858.

WM. SHANNON, *Commissioner.*

Affidavit of H. Hunt.

RUSSELL *vs.* CHRISTMAS. } Jefferson circuit court.

Thomas H. Hunt says he is personally acquainted with Alexander Norton, of New Orleans, A. M. Young and Thomas H. Christmas, of Mississippi, and know they are all men of highly respectable standing.

THOMAS H. HUNT.

Sworn to before me by Thomas H. Hunt this 20th day of February, 1858.

H. C. PINDELL, *N. P. J. C.*

Affidavit of C. Busham.

This affiant says at the last term of this (the Jefferson circuit court,) to wit, he was summoned by plaintiff, and was in attendance as a witness for Capt. Russell on the trial of this case, but was not examined. He would then have stated that he knew William A. Wilson well, and and that he was not, during the years 1839, '40, or '41, able to purchase a steamboat of the value of the Rodolph, without aid from other
560 parties. He was a clever young man, but his means were quite limited. I knew Churchill Samuel well. He was a good business man, and I have no idea that he would have *releaved* Christmas from a debt created, of a sum of 5 or $6,000, and taken said Wilson for the

same, without the name of said Christmas being on the paper. This I state from my knowledge of said Samuel's business character. The usual wages of steamboat captains in 1839, '40, and '41 was about $125 per month, to the best of my recollection.

CHARLES BASHAM, JR.

JEFFERSON COUNTY, *sct:*

Subscribed and sworn to by Charles Basham, jr., before me, February 23rd, '58.

J. J. DOZIER, *Executor.*

Affidavit of R. W. Burney.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, L. S. Houghton, an acting J. P. in and for the county and State aforesaid, R. H. Burney, to me personally well known, who, being first duly sworn, states he has known John R. Davis, formerly of Vicksburg, for several years, and that his general character for truth and veracity has generally been very bad.

R. W. BURNEY.

561 Sworn to and subscribed before me this 9th day of February, 1858.

L. S. HOUGHTON, *J. P.*

Affidavit of James Mather and F. Carter.

Affidavit of Ja's Mather.

Affiant says that he was pilot on the st'r Nautilus in December, 1839; that the boat left the city of Louisville in the latter part of December, 1839; that on that trip the said boat was ice-bound at Bond Harbor, about 3 or 4 miles below Owensboro, Ky., where she was detained for some considerable time; the exact time I do not recollect at this time. I know that Mrs. Wilson and Mrs. Carting were on board the boat that trip. Captain Wilson came on board the Nautilus at mouth of Red River, and took his wife off board the Nautilus. The price of captains of boats in winter of 1839 and '40 was from $100 to $125 per month, as well as he recollects.

Subscribed and sworn to by Ja's Mather this 25th Feb., '58.

W. F. BARRETT, *N. P. J. C.*

Frank Carter says that he was well acquainted with Captain W. A. Wilson, and that in 1838, '39, and '40 *that* he knew of no visible effect which he had. He was not regarded as a man of means, and at no
562 time was he able to purchase such a boat as the steamer Rodolph; he was deemed to have no resources except from his wages as captain of steamboats. He says, as well as he recollects, the price or wages of steamboat captains was from $100 to $125 per month in the years 1839 and 1840.

FRANK CARTER.

Subscribed and sworn to February 25th, 1858.

W. F. BARRETT, *N. P. J. C.*

Letter referred to.

VICKSBURG, *Dec. 19th*, 1839.

Mr. CHURCHILL SAMUELS:

SIR: My draft for $6,000 falls due in New Orleans on 1st January, given for steamer Rodolph, of which I fear I will not be able to pay at maturity. I shall endeavor to pay a part, say $2,000 or $2,500, of it, and must ask the favor to renew it for 90 days. Cotton being so very low, I dislike exceedingly to sell. My interest in the boat I have parted with, and am to *recover* my pay in 20th March. By extending the payment of this you will much oblige me; the unprecedented time is sufficient apology for the request.

Let me hear from you immediately, and oblige yours, respectfully,

R. CHRISTMAS.

563 The following is the notice filed in the foregoing cause, to wit:

Notice.

NEW ORLEANS, *Jan. 26th*, 1858.

Mr. JOHN W. RUSSELL.

SIR: I hereby give you notice that I desire to be present at the taking of any affidavits or testimony which you intend to take in the city of New Orleans, during this month, for the purpose of being read as evidence in the case of John W. Russell v. R. Christmas, now pending in Jefferson circuit court, Kentucky. You can notify me of the time, day, and place, office, street, and number, by leaving notice for me at the office of Mr. J. Cartwell, No. 19 Camp st., not. pub. And I hereby further give you notice that I shall object to the reading, as evidence in the above case, any affidavits or testimony taken in you behalf, without you notify me of the taking of the same, and giving me an opportunity of being present.

Yours, &c.,

R. CHRISTMAS.

Affidavit of J. Castell.

STATE OF LOUISIANA,

Parish of New Orleans, City of New Orleans:

564 I, W'm Jos. Cartell, a notary public in and for the parish of Orleans, State aforesaid, duly commissioned, sworn, and qualified, do hereby certify that on the evening of Tuesday, the 26th inst., at or about the hour of 10 o'clock p. m., in the rotunda of the St. Charles Hotel, in this city, I served a duplicate original of the letter or notice on the other side upon Mr. John W. Russell, personally, at the request of Mr. R. Christmas; and I further certify that up to the present time (to wit, 2 o'clock p. m. of this day) no notice of the taking of affidavits or testimony has been left at my office by the said Russell.

In faith whereof I grant these presents under my signature and the impress of my seal of office, at New Orleans aforesaid, this 30th January, A. D. 1858.

W. J. CASTELL, *N. P.*

STATE OF LOUISIANA, *City of New Orleans:*

Personally appeared before me, a commissioner for the State of Ken-

tucky, duly appointed by the governor thereof, to administer oaths, take depositions, &c., W'm J. Castell, who, after being duly sworn according to law, by the undersigned commissioner, to declare the truth, deposes that the facts contained in the above certificate, signed by him in his official capacity of a notary public, are true.

W. J. CASTELL.

565 Sworn and subscribed before me this 30th January, 1858.
[SEAL.] R. P. HARRISON, *Commissioner.*

Bill of sale.

The following is a bill of sale filed in the foregoing cause, to wit:

FRANKFORT, *October* 1, 1838.

Know all men by these presents that we, P. and J. Swigert, C. and E. Samuel, Tho's N. Lindsay, Edw'd H. Watson, and John W. Russell, have bargained and sold and delivered unto Richard Christmas, of County, Miss., the steamboat "Rodolph," with her engine, tackle, apparel, and furniture, for the consideration of $18,000, the receipt whereof is hereby acknowledged; and do by these presents warrant the title of said boat free from all incumbrances, debts, and claims of all persons whatever, up to the first day of Sept. last past, when possession was given.

C. AND E. SAMUEL.
E. H. WATSON.
TH. N. LINDSAY.
P. AND J. SWIGERT.
JOHN W. RUSSELL.

DISTRICT AND PORT OF CINCINNATI, *to wit:*

I, S. B. W. McLean, surveyor and inspector of the revenue, do certify that the within is a true copy of a bill of sale on file in this
566 office.

Witness my hand and seal this 12th day of February, and in the year 1858.

S. B. W. McLEAN,
Surveyor and Inspector of the Revenue.

The following is the enrolment filed in the foregoing cause, to wit:

Enrolment.

Enrolment in conformity to an act of Congress of the U. S. of America, entitled "An act for the enrolling and licensing ships or vessels employed in the coasting trade and fisheries, and the regulating the same."

Henry M. Ryan having taken and subscribed the oath required by the said act, and having sworn that Richard Christmas, of Mississippi, is a citizen of the U. S., and sole owner of the ship or vessel called the "Rodolph," whereof is at present master, and as he hath is a citizen of the U. S., and that the said ship or vessel was built at Jeffersonville, Ia., as per enrolment No. 20, dated Louisville, May 8th, 1838, now surrendered in charge of owners, as per bill of sale on file, and in conformity to the late act of Congress, and this enrolment on certificate of inspectors of steamboats, boilers, and machinery,

567 and said enrolment having certified that said ship or vessel has one deck, and no mast, and that her length is 143 feet, her breadth 20 feet 6 inches, her depth 4 feet 6 inches, and that she measures 150 tons, and that she is a steamer, has no galery and no figurehead, and the said *cut* having agreed to the descriptions and admeasurements above *above* specified. and a sufficient security having been given, according to the said acts, the said steamer has been duly enrolled at the port of Cincinnati.

Given under my hand and seal, at the port of Cincinnati, this 9th day of November, in the year 1838.

ROBERT PURSHEN, *Surveyor.*

DISTRICT AND PORT OF CINCINNATI, *to wit:*

I, S. B. W. McLean, surveyor and inspector of the revenue, do certify that the within is a true copy of enrolment from the records of my office.

Witness my hand and seal this 12th day of February, 1858.

[SEAL.] S. B. W. McLEAN,
Surveyor and Inspector of the Revenue.

The following is the amended bill of exceptions:

RUSSELL *vs.* CHRISTMAS. } Jefferson circuit court.

Be it remembered that, on the trial of this cause, at the November term, 1857, after the evidence given, as shown by the former bill
568 of exceptions herein, the defendant introduced and read the depositions of Elisha North, Stephen G. Whitehead, Alfred M. Young, Benj. S. Topham, Abram K. Smedes, Robert W. Purney, Sam'l Nelson, D. C. Bonham, and Duff Green, (see page in record in this case, already filed in the clerk's office of the court of appeals,) also a certified copy of a record of the commercial court of New Orleans, in suit No. 3631, of John W. Russell, &c., against W. A. Wilson, (No. 1,) and *and* of a suit in the same court, No. 4056, of John W. Russell, &c., against W. A. Wilson, (No. 2,) both already in transcript at court of appeals.

The plaintiff then read the certified copy of a record of the commercial court of New Orleans, in suit No. 3635, of W'm T. McCormick against W. A. Wilson, (see page 165,) and also the deposition of L. Madison Day, B. Eagan, and J. Sidney Relf, (see pages 190, 191,) which, with the evidence set forth in the former bill of exceptions, was all the evidence; and thereupon the jury found a verdict for the plaintiff for with interest from

And defendant filed and made, on the 12th November, 1857, a motion for a new trial, on the following grounds, viz, (see page 158;) and filed the affidavit of W'm S. Bodley, (see page 161.)

569 And afterwards, on the 24th November, 1857, filed the following affidavit of defendant, (see page 162,) and on the 24th February, 1858, filed the affidavits of C. W. Allen, Alexander Allen, John Simmons, Peter Fearn, J. S. Brien, and two affidavits of Thomas H. Christmas, (see pages 223, 216, 217, 218, 195, 219, for affidavits and exhibits attached;) *of Thomas H. Christmas,* pages 192, 193, 194; affidavit of J. S. Brien, and exhibits referred to in his affidavit, pages 198 to 208; affidavit of A. Allen, page 216; of John Simmons, 217; Peter Fearn,

218; second affidavit of Thomas H. Christmas, page 219; C. W. Allen, 223 to 231.

And on the trial of the motion for a new trial, on 26th February, 1858, defendant also filed the affidavit of Frank Carter, with the letter of Wilson attached to it; the affidavits of W. A. Lake, A. Bonwell, A. M. Young, H. M. Markham, and L. S. Houghton, certified. (Affidavit of Frank Carter, page 209 to 211; affidavit of W. A. Lake, page 238; A. Burwell, 238; Markham and Young, 230; L. S. Houghton, certificate, 240.) Also filed the affidavits of T. H. Hunt, A. Norton, A. Kelly, W. J. Castell, R. W. Burney, and R. Steele, and W. H. Sparks and R. Christmas. (Affidavit of R. Christmas, page 248; A. Norton and A.
570 Kelly, 253; T. H. Hunt, 254; R. H. Burney, 255; W. J. Castell, 258; D. Steele, 252.)

The plaintiff also filed the following affidavits, to wit: On 24th February, 1858, or on trial, those of Charles Burham, C. B. Church, J. W. Russell, Charles S. Miller, T. B. Winston, W. T. McCormick, W. M. Fleming, James Kelly, J. R. Davis, James Mathers, and Frank Carter, and the affidavit of Thomas N. Lindsay, dated November 7th, 1857.

Which motion was overruled, to which defendant excepted, and now excepts, *filed same day;* read an enrolment of boat, with endorsement thereon to Wilson, at New Orleans, and also enrolment at Cincinnati to Christmas. Thereupon defendant asked a continuance of this motion. Affidavits of C. Barham, 254; Ch. B. Church, 246; J. W. Russell, 251; Ch. S. Miller, 244; Thomas B. Winston, 247; W. T. McCormick, 214; W. M. Fleming, 240; James Kelly, 212; John R. Davis, 242: James Mathers, 255: Frank Carter, 255; T. N. Lindsay, 2d enrolment, 260; which was all the evidence submitted to the court on the motion for a new trial; to which the defendant at the time excepted, and now excepts, and prays that this his bill of exceptions be signed, enrolled, and made a part of the record, which is done accordingly.

P. B. MUIR. [SEAL.]

And at a court, continued and held as aforesaid, on the 19th day
571 of June, 1858, at the court-house in the city of Louisville, came the parties by their attorneys, and then came the plaintiff, and on his motion, and it appearing from an inspection of the minutes of the court, made by the clerk of the court herein, on the 26th day of February, 1858, that an order of remittitur of $200 upon the judgment herein has been omitted by the clerk of this court to be made an order herein, it is ordered that a "nunc pro tunc" order be now entered in conformity to said minute of this court. It is therefore ordered by the court that a remittiture of $200 of said judgment rendered herein be, and the same is hereby, entered herein, to take effect and to be applied as a credit on said judgment as of the 1st day of March, 1841; to which order the defendant excepts.

And on the 31st March, 1859, the following mandate of court of appeals was filed in office, to wit:

Appeal from Jefferson circuit court.

State of Kentucky court of appeals, February 12th, 1859.

R. CHRISTMAS ET AL., APPELLANTS,
against
J. W. RUSSELL, APPELLEE.

572 The court being sufficiently advised, it seems to them there is

no error in the judgment herein. It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

A copy. Attest:

R. R. REVILL, *C. C. A.*

Taxation of plaintiffs' costs.

Clerk	$60 60
Record	68 75
Depo'n	41 50
Whole amount	$170 85

Attest:

JAMES P. CHAMBERS, *Clerk.*

STATE OF KENTUCKY:

I, James P. Chambers, clerk of the Jefferson circuit court, in the State aforesaid, do hereby certify that the foregoing two hundred and sixty-six pages contain a full, true, and complete transcript of the record and proceedings had in the case therein mentioned; and I do further certify that the interlinations on pages 52, 118, 204, 158, 159, and 170 were made by me in order to complete the same.

In testimony whereof I have hereunto set my hand as clerk aforesaid, and affix the seal of said court, this 21st day of April, 1859, and in the 67th year of the commonwealth.

[SEAL.] JAMES P. CHAMBERS, *Clerk.*

573 STATE OF KENTUCKY:

I, P. B. Muir, judge of the 7th judicial district, in the State aforesaid, and by virtue of my office sole judge of the Jefferson circuit court in said State, do certify that James P. Chambers, whose signature is affixed to the foregoing certificate, is, and was at the time of signing the same, clerk of said court, and that his certificate and attestation is in due form of law.

Given under my hand this 21st day of April, 1859.

P. B. MUIR.

To the reading of which the defendant, by his counsel, objected, but the court overruled the objection, and permitted the same to be read in evidence. To which decision and ruling the defendant then and there, before the jury retired, excepted and prayed this his bill of exceptions to be signed, sealed, enrolled, and made part of the record; which is done accordingly.

Given under my hand and seal this 26th day of May, 1860.

S. J. GHOLSON. [SEAL.]

Verdict.

Upon their oaths do say they find for the plaintiffs, on the issue joined, the debt in the declaration mentioned, and assess the damages
574 by reason the detention thereof at six thousand five hundred and twenty-one $\frac{35}{100}$ dollars.

Judgment.

Therefore it is ordered by the court that the said plaintiff, John W.

Russell, for the use of himself and Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas H. Lindsay, in his own right and for his use as administrator of Churchill Samuel, deceased, recover of and against the said defendant, Richard Christmas, the sum of five thousand six hundred and thirty-four $\frac{13}{100}$ dollars, the debt in the declaration mentioned, and also the sum of six thousand five hundred and twenty-one $\frac{35}{100}$ dollars, for damages sustained by reason of the detention of the debt aforesaid, by the jurors in form aforesaid assessed, with interest on said sums at the rate of six per centum per annum, and also his costs and charges by him about his suit in this behalf expended.

And the said defendant in mercy, &c.

On motion of defendant by attorney, it is ordered by the court that a credit of two hundred dollars, with interest from 1st March, 1841, be entered on the judgment aforesaid, said credit appearing on the record filed herein, and having been omitted by mistake of the jury.

575 Writ of error bond tendered in open court, with William Yerger and Warren P. Anderson securities therein. Writ of error bond approved by the court, and writ of error and citation granted.

Writ of error bond.

UNITED STATES OF AMERICA,
Southern District of Mississippi, set:

Richard Christmas, William Yerger, and Warren P. Anderson are held and firmly bound unto John W. Russell, for his own and the use of Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas H. Lindsey, in his own right and for the use of said Lindsay as administrator of Churchill Samuel, deceased, in the just and full sum of twenty-four thousand four hundred dollars, lawful money of the United States, to be paid to the said John W. Russell et al., as aforesaid, their lawful attorneys, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 25th day of May, A. D. one thousand eight hundred and sixty.

The condition of this obligation is such, that whereas, at a
576 term of the circuit court of the United States for the southern district of Mississippi, commenced and held at the city of Jackson on the first Monday of May, A. D. 1860, judgment was rendered by said court in favor of the said John W. Russell et al., against the said Richard Christmas, for the sum of twelve thousand one hundred and fifty-five dollars and $\frac{48}{100}$, and costs of suits, and the said Richard Christmas has sued out a writ of error from the Supreme Court of the United States to reverse said judgment:

Now, if the said Richard Christmas shall prosecute his writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs as the said Supreme Court of the United States shall adjudge in the premises if he, the said Richard Christmas, shall fail to make his plea good, then, and in that case, this obligation to be void; otherwise to remain in full force and virtue.

(Signed) R. CHRISTMAS, [SEAL.]
By JAMES F. RUCKS,
Attorney in fact.
W. YERGER. [SEAL.]
W. P. ANDERSON. [SEAL.]

577 *Power of attorney to James T. Rucks.*

Know all men by these presents that I, Richard Christmas, of the county of Issaquena, State of Mississippi, have made, constituted, and appointed James T. Rucks, esq., of Jackson, in said State, my true and lawful attorney, for me and in my name, and as my act and deed, to sign, seal, and deliver any writ of error, supersedeas, injunction, or appeal bond which it may be necessary or proper to execute in the suit of John W. Russell, use, &c., v. me, now pending in the circuit court of the United States for the southern district of Mississippi, in order to prosecute an appeal or writ of error to the Supreme Court of the United States; and by these presents I authorize my said attorney to execute any bond which may be required in the premises, and hold and ratify for firm and effectual whatever my said attorney may do.

In witness whereof I hereunto set my hand and seal this 25th day of May, A. D. 1860.

(Signed) R. CHRISTMAS. [SEAL.]

Teste: A. BURWELL.

UNITED STATES OF AMERICA,
Southern District of Mississippi, Circuit Court U. S.:

578 I, William H. Brown, clerk of said circuit court, do hereby certify that the foregoing one hundred and eighty-five pages contain a full, true, and complete transcript of the record of the judgment between the parties therein named, together with a true and correct copy of the writ of error bond filed and approved therein, as the same now remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Jackson, this 17th day of November, A. D. 1860, and of the independence of the United States the 85th.

[SEAL.] W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of Mississippi, Circuit Court United States:

I, Samuel J. Gholson, presiding judge of said circuit court, do hereby certify that William H. Brown, whose name is subscribed to the foregoing certificate, is, and was at the time of signing the same, clerk of said court, and that his attestation is in due form of law.

Given under my hand and seal this 20th day of November, A. D. 1860.

S. J. GHOLSON. [L. S.]

579 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between John W. Russell, for his own, and the use of Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas H. Lindsay, in his own right and for his use as administrator of Churchill Samuel, deceased, plaintiff, and Richard Christmas, defendant, a manifest error hath happened, to the great damage of the said Richard Christmas, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this

behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you
580 have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of May, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the 84th.

Issued the 25th day of May, A. D. 186 .

[SEAL.] W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To John W. Russell, for his own use, et al., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the first Monday in December next, pursuant to a writ of error filed in the
581 clerk's office of the circuit court of the United States for the ninth circuit and southern district of Mississippi, wherein Richard Christmas is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi, this 25th day of May, in the year of our Lord one thousand eight hundred and sixty, and in the 84th year of the independence of the United States.

S. J. GHOLSON.

(Indorsed:) Richard Christmas, citation, v. John W. Russell, use, &c., to the marshal of the southern district of Mississippi, to serve on C. L. and R. S. Buck, attorneys for John W. Russell. W. H. Brown, clerk.

Service of the within writ acknowledged this September 7th, 1860.

C. L. AND R. S. BUCK,
Attorneys for Russell.

Marshal's fees.

Service	$2 00
Mileage	3 00
Copy E. & R	1 00
	$6 00

Received 25th May, 1860.

R. GRIFFITH, *Marshal.*

582 I, D. W. Middleton, clerk of the Supreme Court of the United States, do hereby certify that the annexed and foregoing one hun-

dred and forty-five (145) printed pages constitute a true copy of the writ of error, citation, and transcript of the record filed in the said Supreme Court in the case of Richard Christmas, plaintiff in error, vs. John W. Russell, use, &c., et al., in error to the circuit court of the United States for the southern district of Mississippi, as the same remain upon the official records of the said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Supreme Court of the United States, at the city of Washington, this tenth day of June, A. D. 1869.

[L. S.] D. W. MIDDLETON,
Clk Sup. Ct. U. S.

[Rev. stamp.]

Filed by compl'ts' sol. July 3rd, 1869.

GEO. T. SWANN, *Clk.*

583 And on the final hearing of said cause, No. 86, John W. Russell et al. vs. Willie Lyons et al., in said circuit court of the United States for the southern district of Mississippi, the following testimony and proof was introduced and read to the court in behalf of defendants in said cause, to wit:

Deposition of Richard Christmas.

UNITED STATES OF AMERICA:

In the circuit court of U. S., 5th circuit and so. district of Missi.

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } 86.—In chancery.

Interrogatories to be propounded, on special leave for that purpose, to defendant Richard Christmas, the answers to which will be read in evidence in behalf of defendants H. H. Christmas and Mary E. Christmas on the trial of the above-stated cause.

Int. 1st. Are you acquainted with the parties to this suit? If yea, which ones?

Int. 2nd. Are you related in any manner to either of your co-defendants? If yea, to whom are you related and what is the relationship?

584 Int. 3rd. If you have said defendant H. H. Christmas is your son, state whether he is a son by a former wife or by your present wife, at what time was he born, and when did he arrive at his majority.

Int. 4th. Did or not the said Harry H., during his minority, own a separate estate in lands and slaves, or either? If yea, from whom and at what times were said lands derived, and from whom and at what times were said slaves derived, and by what titles? Who was the trustee, if any, of said Harry during his minority, and who received the rents, issues, and profits of said estates during the same period?

Int. 5th. If you have said that you were the trustee of said Harry during his minority; that he had a separate estate in lands and negroes; and that you had possession of the same, and received the rents, issues, and profits thereof during his minority, state the quantity and quality of the lands, the number of acres in cultivation annually and in what

years, the quantity of cotton or corn they usually produced to the acre, and the values of the annual rents of said lands per acre and per annum, and the sum-total of the same.

Int. 6th. If you sold any timber, firewood, timber. or other
585 product of said trust estate not derived from the land by cultivation, state an account of the same, with the amount of your indebtedness on that account.

Int. 7th. State also an account of the slaves and their increase, the value of their annual hires, and your indebtedness to said Harry on that account and up to what time.

Int. 8th. State whether, by the terms of said trust, you had power to sell any of said lands of said trust estate. If yea, did you sell any of said lands, and to whom and what quantity, and for what amounts and at what times? State a separate account of these sales, if any.

Int. 9th. Did you ever sell or dispose of any of the slaves of said trust estate? If yea, at what time, and by what authority, and for what sum of money, and what was due the said Harry on account said sales of slaves, if any?

Int. 10th. If you were indebted to said Harry in any other sum on account of said trust estate, state the same. State also an account of any credits you were entitled to by reason of any permanent improve
ments made by you on said trust estate, and the balance, if any,
586 due said Harry H.

Int. 11th. In your answer filed in this cause, you have filed copies of deeds in trust made by H. R. W. Hill and wife, numbered 5, 6, and 7. State whether these are the titles whereby said Harry became the owner of said lands, and you became his trustee.

Int. 12th. If, in your former answers, you have said your first wife, the mother of the said Harry, had a separate estate in slaves, state how she derived said estate, and whether or not Exhibits No. 10 and 11, filed with your answer in this cause, are the titles by which your said wife held said trust estate.

Int. 13th. When did your first wife die, and to whom did her separate estate descend? How many children had she, and what were their names, and are they, or either of them, dead or living now?

Int. 14th. If you have said your first wife had two sons, and that one of them is dead, when did he die, what estate did he leave, and who inherited the same?

Int. 15th. If said Harry inherited any slaves from his deceased mother and brother, state what number of said slaves, when they came
587 to the possession of said Harry or his trustee for him, the number of hands, and their increase up to 1862.

Int. 16th. State whether or not the said Harry H. Christmas demanded of you a settlement of *of* said trust estate at any time during the year 1862. If yea, state whether any such settlement was made in part or a whole; and if you made any payment to said Harry in that year, state how much you paid him, and whether in money, or by the sale, transfer, assignment, or delivery of promissory notes or securities for the payment of money.

Int. 17th. State whether or not, in the year A. D. 1862, you assigned and delivered to H. H. Christmas three promissory notes for the sum of $16,666 each, made by Willie Lyons, and payable to bearer, bearing date the 30th day of November, A. D. 1859, and payable at one, two, and three years from the 20th day of December of that year. If yea, was said assignment in writing, or by delivery, or both, and what was the consideration of said assignment and delivery of said notes, and

what credit did you receive for the same? If you have any written evidence of such a contract, file the same or a copy thereof, or
588 state why you cannot, and state the substance of the same; or, if you took any receipt from said H. H. Christmas for said payment and assignment, file the same or a copy, or state why you cannot, and state the contents of the same. State also what property and securities for money you had remaining after the transfer of said notes to said Harry in 1862.

Int. 18th. If you have said that you did assign and deliver said three Lyons' notes to said H. H. Christmas, state whether said notes subsequently came to your hands or possession, and, if yea, at what time, under what circumstances, and for what purpose. Did said notes ever become your property after the assignment of the same to said Harry H. in 1862? If nay, what was the extent of your authority over said notes? Did or not the said H. H. Christmas authorise you to dispose of the same for your own benefit, or to assign or pledge the same in any manner as security or indemnity for obligations of your own?

Int. 19th. Did you ever, by letter or otherwise, assign or transfer to William Yerger, your co-defendant, either of said notes for any purpose whatever?

Int. 20th. If, in any correspondence with said William Yerger, you have ever referred to either of said Lyons' notes, state what was
589 your object in so doing, and what was the final result of any such correspondence in reference to said note or notes so referred to. Did said William Yerger ever claim of you the possession of, or property in, or proceeds of, any one of said three notes by reason of said correspondence? If yea, at what time and which one of said notes did he so claim?

Int. 21. State whether or not said three notes were at any time in the hands or possession of A. O. Brannin, in New York City. If yea, for what purpose? Did you or not inform said Brannin that said notes were the property of your son Harry H. Christmas? If not, why not? Was or not said Harry supposed to be dead at the time said notes were left in the hands of said Brannin? State anything you may know in this connexion.

Int. 22. What did said Brannin finally do with said three notes; did he ever return them to you? If yea, under what circumstances; and if not, why not? State all the particulars.

Int. 23rd. What disposition was finally made of said three notes; who received the benefit or proceeds of the same; and how was this accomplished?

Int. 24. If at any time you ever informed said Yerger that said
590 notes had been transferred to any one, state when you so informed him, and what objection, if any, said Yerger made to said transfer of said notes, or either of them?

Int. 25th. Do you know whether said Lyons ever paid or settled any portion of said notes? If yea, state all you know about said payment or settlement, and from whom you obtained your information. Was or not said settlement procured by you or for your benefit? Had you any interest in the proceeds of said Lyons' notes at the time such settlement was made, (if any settlement took place,) or at any subsequent time?

Int. 26th. Do the said defendants H. H. Christmas and Mary E. Christmas reside in Mississippi, Kentucky, or elsewhere? If elsewhere, how long have they, or either of them, resided abroad? Have they, or either of them, separate estates from yourself; and if yea, do you exercise any control over the same; and if yea, for what reason, and by

what authority? If you have any power of attorney from either of these parties, where may they be found? If they are filed with your answer in this cause, refer to them by the number of the exhibit, if you can.

591 Int. 27th. Do you know anything in regard to two notes made by Willie Lyons in favor of H. H. Christmas, or order, for $8,339 90 each, dated about the day of June, 1866, the one payable the 1st of December, 1866, the other the 1st of Feb'y, 1868? If yea, have you any interest in or claim to either of said notes? If nay, to whom do said notes, or either of them, belong? State all you know in regard to the title and consideration of said notes, and the sale and transfer of either of them by said H. H. Christmas, if any such occurred. State all the particulars, and what interest, if any, you have in the result of this suit.

Int. 28th. In your answer filed in this cause, you have filed an original letter of your co-defendant William Yerger, marked Exhibit No. 3 to said answer. State whether or not you know the handwriting of said Yerger, and if said letter is in his usual handwriting, and whether the same was received by you in due course of correspondence with said Yerger, and in reply to letters of yours to said Yerger of the dates therein stated.

Int. 29th. State anything else you may know of value to defendants H. H. and Mary E. Christmas.

JOHN D. FREEMAN,
Sol. for H. H. and Mary E. Christmas.

592 Int. 30th. Had the said Harry H. or Mary E. Christmas any knowledge of the claim of said John W. Russell et. als. vs. yourself at the time the said Lyons notes were transferred to said Harry H.?

Int. 31st. Make any necessary explanation of any matter not heretofore made in your answers hereto in reference to the subject-matter of these interrogatories.

JOHN D. FREEMAN, *Sol., &c.*

Cross-interrogatories by complainant to Richard Christmas, a witness for defendants.

1st. At what time did you leave Matamoras for Havana? When did you reach New York on your outward voyage to Europe? When did you reach Liverpool? When did you arrive at London, and at what time and at what place did you first learn that the rumor of your son's death, of which you speak, was unfounded? State particularly, and give dates.

2d. Did you on arriving at New York deliver the Lyons notes, of which you speak, to Mr. Brannin, and with what specific instructions?

3rd. What was your pecuniary condition in 1848 and 1849? Were there not many judgments against you in the circuit courts of Issaquena and Warren and Madison Counties unsatisfied?

593 4th. From what source did H. R. W. Hill obtain the property which he conveyed to your son, H. H. Christmas? Was not part of it obtained from you by a sale under a deed of trust executed by yourself to said Hill on the property, or mortgage, or some conveyance, to secure a debt due by you to Hill?

5th. What amount was due under the deed of trust or mortgage?

6th. Was or not the matter understood between yourself and Hill, in advance of the sale, that Hill was to buy under the deed of trust or

mortgage, and then convey to your son, with the *a* provision that you, as trustee, could pay what was due Hill under the deed of trust?

7th. Did you not continue in possession of the property after the sale to Hill, and after his conveyance to your son?

8th. State how the sale to Hill by W. McCraven and wife was brought about. Did you have any agency in it? If yea, what part did you take? Did you not, in fact, procure the conveyance from William McCraven and wife to Hill? State particularly all the facts connected with the transfer of the title by W. McCraven and wife to Hill.

9th. Did you not select Hill to take the title, and did not
594 McCraven act under your instructions or by your direction; and did you not negotiate the transaction?

10th. What amount did Hill give for the lands he purchased at commissioner's sale under the decree against you, or under the deed of trust or mortgage? State as near as you can recollect.

11th. Was not the amount bid greatly below the value of the land? Did it exceed the amount of the debt due to Hill, or under the deed of trust or mortgage; and, if so, what became of the surplus?

12th. What was the value of the property conveyed by Hill to your son in 1848 and 1849, and do you think Hill could have purchased the property, getting a good title, for the amount he paid for it, or for the sum which you were to pay as trustee, without your man'gement or intervention?

13th. What was your age, and that of your son, in 1848?

14th. At what time was the accepted draft on Martin, Cobb & Co. drawn by you, and delivered to William Yerger for his and W. P. Anderson's indemnity, as your sureties, delivered back to you, and in what way and for what purpose did you procure its delivery, and from whom, and what did you do with said draft?

595 15th. Did Martin, Cobb & Co. insist on its delivery to them; if yea, on what ground, and for what reason?

16th. When was the mortgage or deed of trust given by you on the lands which you sold to Wiley Lyons in Bolivar County released?

17th. Were you not under a pledge or contract to remove all incumbrances on the land sold to Lyons?

HARRIS AND WITHERS.

It is hereby agreed that the deposition of Richard Christmas upon the foregoing interrogatories and cross-interrogatories may be taken before any commissioner of the United States, or the State of Kentucky, or elsewhere, and that the same may be read in evidence, subject only to legal objections to the competency and relevancy of the testimony, hereby waiving the issuance of commission, and the naming of a commissioner by the court.

October 1st, 1869.

HARRIS AND WITHERS, *for Compl'ts.*
JOHN D. FREEMAN, *for Def'ts.*

UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that, on this 20th day of October, in the year of our Lord one thousand eight hundred and sixty-nine, I, James A.
596 Beattie, a commissioner, duly appointed by the circuit court of the United States for the district of Kentucky, and commissioned as such, with power and authority to take acknowledgments of bail,

affidavits, and depositions of witnesses in civil cases, and to exercise the other powers conferred on such commissioners by the acts of Congress, did call, and cause to be, and personally appear, before me, at my office in the city of Louisville, and State aforesaid, pursuant to the annexed agreement, Richard Christmas, to testify, and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein John W. Russell et als. are complainants and Willie Lyons et als. are defendants in chancery. And the said Richard Christmas being about the age of sixty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said Richard Christmas, and he did thereupon depose, testify, and say as follows, viz:

597 In answer to the interrogatories-in-chief and cross-interrogatories hereto annexed—

Interrogatories-in-chief:

1st. To the first interrogatory-in-chief the witness answering says: I know John W. Russell and the defendants and Churchill Samuels.

2nd. To the second interrogatory-in-chief the witness answering says: The defendant Mary E. Christmas is my wife, and the defendant H. H. Christmas is my son. I am not related to any of the others.

3rd. To the third interrogatory-in-chief the witness answering says: H. H. Christmas is my son by a former wife, and was born the 25th day of December, 1840, and was twenty-one years of age on the 25th day of December, 1861.

4th. To the fourth interrogatory-in-chief the witness answering says: He owned a separate estate during his minority in lands and slaves; that is, he owned them in his own right. The said lands were derived from H. R. W. Hill, for whom he was named by the deeds, one dated, I think, on the eighth day of June, 1848, and the other on the twenty-first of November, 1849, and another deed subsequently to that, the
598 date of which I do not now recollect. By which three deeds, the same that are referred to in my answer in this suit as Exhibits Nos. 5, 6, and 7, there was conveyed to me in trust for the said H. H. Christmas about three thousand acres of land in Issaquena County, Mississippi. The said slaves were derived as follows: In 1832 I married Mary Emeline Smith, of Williamson County, Tennessee, and shortly after said marriage the said Alexander Smith and wife conveyed to me, and my wife, their daughter, a valuable farm, or tract of land, well improved, in Williamson County, Tennessee, one-half of which was conveyed to me, and the other half to the separate use of my wife. In 1840 I was offered twenty thousand dollars for the farm, but my wife's parents would not consent to the sale unless I would secure my wife in other property of equal value. I then agreed to convey to her, if the sale was made, the value of her half-interest in slaves then on my plantation in Warren County, Mississippi. The farm was sold for twenty thousand dollars, and I received the money; and afterwards, in pursuance of my agreement, I conveyed in 1841 to Benjamin D. Smith, my wife's brother, in trust for my wife, fourteen slaves. The particulars of said con-
599 veyance are shown by the deed of trust, filed with my answer herein as Exhibit 10. In 1840 one D. L. Horn died in Warren County, Mississippi, and devised to my said wife, and William Hardeman

Christmas, our only child at that time, the rest of his estate, after making certain specific devises, which consisted of a plantation and about sixty negroes. The land and crop, and other things, such as the hire of the negroes, was applied to the settlement of the mortgage which I held on the land and negroes. The negroes were left to my said wife and child. My wife died in 1841, and my son William Hardeman Christmas died in the same year after her, leaving my son Harry Hill Christmas, who was born in 1840, after the death of D. L. Horn, their sole heir at-law, and he inherited from them the seventy-four slaves. I was the trustee of said Harry Hill Christmas during the time, and received the uses and profits of his estate during his minority.

5th. To the fifth interrogatory-in-chief the witness answering says: The lands which were conveyed to me as trustee for my son Harry consisted of about three thousand acres of first quality of cotton
600 lands. In 1848 there was of the three thousand acres about nine hundred acres cleared and in cultivation, and about the same quantity deadened, and I continued to open up the land at the rate of from fifty to one hundred acres or more every year until 1862, when I had about sixteen hundred acres in cultivation, which would ordinarily produce one bale of cotton to the acre, and fifty bushels of corn per acre, and the land that was cleared would average, in rent, per annum, not less than five dollars per acre for each year, amounting, in all, to about ninety-three thousand dollars, not including interest on each year's rent as it fell due, which would make the amount far exceed this.

6th. To the sixth interrogatory-in-chief the witness answering says: I did sell timber from said land during the time I held the property in trust for my said son. I sold therefrom ten thousand cords of ash firewood, worth in the woods one dollar per cord, and five thousand dollars' worth of cypress timber, amounting, in all, to fifteen thousand dollars, with interest thereon.

601 7th. To the seventh interrogatory-in-chief the witness answering says: As I have before stated, my son Harry inherited from his brother, William Hardeman Christmas, and his mother, seventy-four slaves in 1841, and they came into my hands as my son's property, and I had the use of them and their offspring from that time on until 1862; and when I sold *then* in Texas, in 1864, there was a large increase of grown negroes from them, and out of these seventy-four there were about forty-eight full hands, and I worked them all on the plantation held in trust for my son Harry from 1847 till 1862. The hire of the whole of said negroes during that time would average one hundred and fifty dollars per head per annum. The hire of the fourteen negroes acquired by my son through his mother from the sale of her lands, as before stated by me, amounted to one thousand eight hundred dollars per year for twenty-one years, counting only twelve full hands during that time, and during a portion of that time there were thirteen hands, besides the labor of the increase of that set, and from whom alone eight grown negroes sprang, whose labor is not included in this calculation, and I think
602 only one of that set had died up to 1862. Counting on twelve full hands of that set of negroes during the twenty-one years, and their hire, amounting to thirty-seven thousand eight hundred dollars of principal, and the interest on the yearly instalments of eighteen hundred dollars from the time each instalment fell due, amounted to twenty-three thousand eight hundred and forty dollars, which, added to the principal sum of thirty-seven thousand eight hundred dollars, makes the sum of sixty one thousand six hundred and forty dollars, which I owed my son on account of the same twelve negroes alone of the fourteen de-

rived as before stated. It took, about as near as I can recollect, five years of the hire of the sixty negroes derived through D. L. Horn, together with the lands and crops, as before stated, to satisfy the mortgage which I held on them, so that I was only chargeable with the hire of these negroes for about fifteen years, which, counting at one hundred and fifty dollars per head per year, say forty-six full hands, and not counting the labor of the increase, amounts, without interest thereon, to the sum of one hundred and three thousand five hundred dollars, being at the rate of six thousand nine dollars per annum for the
603 forty-six full hands, and, the interest added, makes a total of $ for this set; which, added to the hire of the other fourteen negroes, makes the sum of over one hundred and seventy-five thousand dollars, which I owed my son Harry on that account in 1862.

8th. To the eighth interrogatory-in-chief the witness answering says: Under the deed of trust I had power to sell all of said lands, and, in pursuance of said power, in April, 1851, I sold thereof to one William Myers six hundred and eighty acres for the sum of seven thousand five hundred dollars, which is shown by the deed filed with my answer herein as Exhibit No. 13. I also sold thereof to Samuel Moore six hundred acres for the sum of seven thousand four hundred and seventy-six dollars in 1853, which is also shown by the deed filed with my answer as Exhibit No. 14. I also sold therefrom five hundred and eighty acres to one William Towner for the sum of eight thousand dollars, which is shown by a deed filed with my answer as Exhibit No. 15. I also sold to George N. Parks one hundred and fifty acres for two thousand dollars.

604 9th. To the ninth interrogatory-in-chief the witness answering says: In 1862 I went to Texas, and carried with me, under an arrangement with my son Harry, all of the said negroes, together with all my own, amounting then to about one hundred and thirty in number, together with about sixty mules, and some ten wagons, teams, &c., and other things. The mules and wagons and about one-third of the negroes were my individual property. Under the arrangement with my son I was to take them to Texas, and take care of them or sell them, as I found best, and the proceeds were to be divided equally between us. In November, 1864, I had sold about one hundred and fifteen of the negroes, and the mules and teams, and invested the net proceeds in cotton, which was about three hundred and two bales, and about twelve thousand nine hundred and ninety dollars in money. The cotton was shipped to Liverpool and sold in October, 1865, for about five thousand nine hundred and ninety-seven pounds three shillings and sevenpence, and the nett proceeds of the money and cotton received by me from the sales of mules and slaves sold in Texas was about forty thousand
605 dollars, one-half of which belonged to my son Harry. The balance of the negroes were freed by emancipation from the war.

10th. To the tenth interrogatory-in-chief the witness answering says: I do not recollect any other indebtedness from me to my son on account of said trust. I was entitled to credits as follows: For clearing about seven hundred acres of land, seven thousand dollars; and for building cabins, gin, and one engine, &c., about seven thousand dollars more.

11th. To the eleventh interrogatory-in-chief the witness answering says: The copies of deeds filed with my answer, made by H. R. W. Hill and wife, Nos. 5, 6, and 7, are the titles whereby my son Harry became the owner of said lands, and I became the trustee.

12th. To the twelfth interrogatory-in-chief the witness answering says: I have stated in my answer No. 4, in answer to the fourth interrogatory, how my wife derived her separate estate in said slaves, and

Exhibits Nos. 10 and 11, filed with my answer herein, show the title by which my wife held the said trust estate.

13th. To the thirteenth interrogatory-in-chief the witness answering says: My first wife died in 1841. Her estate descended to her
606 two sons, William Hardeman Christmas and Harry H. Christmas; and shortly after her death my son William Hardeman Christmas died, and Harry H. Christmas inherited through him the whole of said property, and he is now the only surviving child of that wife.

14th. To the fourteenth interrogatory-in-chief the witness answering says: As stated in my last answer, my wife had two children living after she acquired said estate, and William Hardeman died shortly after her, leaving only the estate which he inherited from his mother, being one-half of her estate, and what was devised to him by D. L. Horn, as stated by me before, and his brother Harry inherited the whole of it from him.

15th. To the fifteenth interrogatory-in-chief the witness answering says: As stated in my answer, No. 4, to the fourth interrogatory, my son inherited from his said mother and brother fourteen negroes through one source, and sixty negroes through another *another*, amounting in all to seventy-four. They all came into my possession for him in 1841, and their increase up to 1862 was large. The increase of the
607 fourteen slaves derived to my wife for the sale of her interest in the farm conveyed to us by her father and mother was eight grown negroes up to 1862, with the loss of only one. The other sixty I cannot state accurately, though it considerably exceeded the deaths. All of these negroes were used by me the whole of the time above mentioned, and I owed my son Harry for them, as stated in my previous answers.

16th. To the sixteenth interrogatory-in-chief the witness answering says: In August, 1862, my son Harry, having shortly before that time become of age, while he was in the confederate army, came home and insisted that we should have a settlement of the matters growing out of said trust, as before related by me, including the rents and proceeds of the lands and the hire of his slaves, and other matters connected therewith. My son had never been paid anything on account of said trust estate or business, or no one else for his benefit. Everything was in great confusion on account of the war at that place, and it was impossible for me to have a full and accurate settlement with him, or even to state the account between us, as the books in which I kept my
608 accounts had been lost or mislaid in moving them about from one place to another for safe-keeping; but I knew that I was very largely indebted to him, so I yielded to his importunities, and by way of partial settlement made an assignment to him in writing of three notes of Willie Lyons, dated the 30th day of November, 1859, each for sixteen thousand six hundred and sixty-six dollars, all payable to me or bearer, with eight per centum per annum interest from the 20th day of December, 1859, in one, two, and three years, respectively, from date, at the counting-house of Payne and Harrison, in New Orleans, Louisiana, with two credits on the first note, one of seven thousand dollars, as cash, the 17th of December, 1860, and five thousand three hundred and twenty-seven dollars and nineteen cents as of the 20th of March, 1861. I then delivered the said notes to my son Harry, and took his receipt for them, as so much on account of my indebtedness to him.

WEDNESDAY, *October 20th*, 1869, 3 *o'clock p. m.*—Continued the taking of this deposition until Thursday, October 21st, 1869, at 9 o'clock a. m., at which time met and continued the taking of the same as follows:

17th. To the seventeenth interrogatory-in-chief the witness
609 answering says: As just stated, in August, 1862, I assigned and delivered to H. H. Christmas three promissory notes of sixteen thousand six hundred and sixty-six dollars each, made to Willie Lyons, and payable to R. Christmas or bearer, but the said notes were dated the 30th of November, 1859, instead of the 30th of November 1839. They were payable in one, two, and three years from the 20th of December, 1859. The said assignment was in writing, and the notes were delivered to him. The consideration of said assignment was my large indebtedness to him, growing out of the said trust transactions, as heretofore mentioned by me, amounting to greatly more than the amount of said notes. I was *I was* credited by the amount of said notes, less the credits on them, in a receipt which was given by my son to me at the time. The receipt was lost in moving about, until *until* lately I found it with some old papers, and had it mailed to my attorney, John D. Freeman, at Jackson, Mississippi, to be used in this case. I am informed, through a letter from him, that it had probably miscarried, and I file a copy thereof, which I retained, with this my deposition,
610 marked Exhibit "B." I had some wagons and teams and other personal property, such as farming implements, and everything necessary to carry on what was in cultivation, sixteen hundred acres, amounting to several thousand dollars; the plantation being very heavily stocked at that time and during that year. I had on the plantation about six hundred bales of cotton, worth thirty thousand dollars, which was destroyed by fire by order of the confederate government. I had the sixty mules, taken to Texas, as before stated, together with about forty out of the one hundred and thirty negroes I have mentioned, belonging to me; also about fourteen negroes I had bought in North Carolina, and had left there, which were all subsequently freed by the issue of the war; also about three hundred and seventeen acres of land in Issaquena County; also note of F. W. Moore for seven hundred and fifty dollars, with many years' interest; also a judgment against Thomas H. Christmas for twelve thousand one hundred and ninety-seven dollars; also a note for money lent him, twelve thousand dollars; also a claim against H. Philips for about two thousand dollars; also a note of Ann Philips for one thousand two hundred and twenty-five dollars;
611 also H. B. Tibbitts and wife's two drafts on R. W. Estlin & Co., New Orleans, and by them accepted for something over twenty-four thousand dollars each, with interest from 1859; besides a set of elegant furniture for a large house, worth from three to four thousand dollars, and many other things, the whole estimated at one hundred and fifty to two hundred thousand dollars during that year, which, except what I have accounted for herein in other answers, was surrendered by me in bankruptcy, and ultimately became but of little value, and a considerable portion of which was entirely destroyed or lost during the war, and afterwards, as the result of the war.

18th. To the eighteenth interrogatory-in-chief the witness answering says: While I was at Matamoras, Mexico, in January, 1865, I learned from various persons that my Harry was dead. One gentleman informed me that he had seen him buried. Prior to this time he had written to me that he had sent a package to me of valuables, including the said three Lyons notes of $16,666 00 each, to Matamoras, to the

care of a merchant of that city, to be delivered to me for safe-
612 keeping. On my arrival there I took charge of the package, and, believing my son was dead, I went by way of Havanna to New York. While there I met with an old friend, A. O. Brannin, of Louisville, Kentucky, who was temporarily engaged in the banking business in New York, and I put the three notes into his possession to sell for me. My son gave me no authority to sell or pledge, or dispose of, or use in any way said notes; but only sent them to me for safe-keeping while he was in the army. But, supposing he was dead, and the notes being payable to me or bearer, I thought they had become my property, and under these circumstances I left them in New York for sale; but, my son being alive, they were not my property, and never have been since the said assignment of 1862. Although I intended, after I learned that my son was not dead, to convert one of the Lyons notes into money, and pay or compromise the Russell claim, and probably wrote to that effect to William Yerger after I had heard of the safety of my son; but it was done without any authority from him, or knowledge or idea of what was going on. I thought that I would be able to remunerate my son in other ways, and satisfy him. During
613 the whole time of my correspondence with Mr. Yerger while I was abroad, according to my best recollection, I made no allusion to the supposed death of my son, because it was not absolutely certain, and I did not desire it to be known if he was while I was absent from the United States, and no one here to look after his plantation in Mississippi and other property. I was afraid the news of his death might be more likely to cause the seizure of his property as abandoned lands for confiscation, or interference with it by the Government in some way. My recollection is, I once wrote to Mr. Yerger to look after his lands, and to get him to sign my son's name for application for pardon, and to quiet any attempt at interference, and to lull any impression as to his death.

19th. To the nineteenth interrogatory-in-chief the witness answering says: I never made any assignment or transfer of either of said three notes to my co-defendant William Yerger, or to any person whatever.

20th. To the twentieth interrogatory-in-chief the witness answering says: During the time of the correspondence referred to, I hoped and expected the Russell suit to be settled by decision or compromise; and I intended with the proceeds of one of the Lyons notes to pay it
614 off if decided against me; but I had no intention of pledging or assiging the said notes, or either of them, to William Yerger, on account of his suretyship for me. On the contrary, I wrote to him repeatedly that I had the notes in New York for sale; and in all of my letters, as I recollect, I told him that I was going to pay the Russell claim, but never made or had any reference to any particular note of the three Lyons notes, and never intended that I would assign or pledge any one of them to him to secure him for paying the claim, because I fully expected and intended at that time to pay myself whatever was adjudged against me, and there would be no occasion to secure him. In one, or maybe two, of my letters I speak of sending a Lyons note; but this was not with any view of pledging it to him as indemnity, but in view of anticipated compromise of the Russell claim, and with the hope that Lyons would cash the note for the purpose of paying off the Russell claim. In one of the letters, in which I spoke of sending the Lyons note to Yerger, I say that I am willing to make a liberal arrangement with Lyons, and request Mr. Yerger to ask Lyons for a proposition, meaning that if any arrangement could be

615 made with Lyons to take up one of his notes, I would send it to Mr. Yerger to arrange the Russell claim with. So far from my ever assigning the note to Yerger, I wrote to him I intended to hold it myself. I had no expectation of his holding it; and Mr. Yerger never claimed the possession of said notes, or either of them, or any right or interest in them at any time on any account.

21st. To the twenty-first interrogatory-in-chief the witness answering says: The said notes were in the possession of A. O. Brannin, as I have before stated, for sale. I did not then inform him that they were my son's notes, because I supposed that he was then dead, and I considered them my property.

22nd. To the twenty-second interrogatory-in-chief the witness answering says: The said three notes were retained in the possession of Mr. Brannin until some time in May, 1866. About that time I reached Louisville, and found that the said notes had been attached in Mr. Brannin's hands for a debt of something over ten thousand dollars due by me to Martin, Cobb & Co., New Orleans, by proceedings in the Louisville chancery court. My son, having been apprised of
616 these proceedings, set up his claim to the notes, and was about to apply in court to be made a party to the suit, and to assert his right thereto; but the assignment which I made to him of the said notes, in 1862, had been lost, and he was advised that under the circumstances there would be some difficulty in establishing his claim; and it was a debt I felt under some obligations to pay, it being for supplies furnished me during the war, and expected, if I had good luck, to be able to discharge all of my debts. So I prevailed on my son to allow the debt to be paid out of the notes, which was accordingly done under an agreement in writing then entered into between Martin, Cobb & Co., the said A. O. Brannin and J. S. Brannin, and my son and myself, that the attachment should be discharged, and the said notes surrendered to my son; and he was to pay out of the first moneys realized on either of said notes the said sum of about ten thousand dollars, of which four thousand six hundred and ninety-five dollars and seven cents was to be paid to the said Brannins for a debt that was due to them from the said Martin, Cobb & Co. This arrangement, I think, was endorsed on each of said notes, and they were then
617 surrendered to my son, Harry Christmas. The said agreement was left in the possession of the said A. O. Brannin, and afterwards, on the ninth of May, 1866, I made a formal notarial assignment of said notes to my son, to supply the loss of the assignment made in 1862. Said notarial assignment is filed with my answer to complainants' bill as Exhibit No. 15; and my son then gave me a receipt for the sum of about forty-eight thousand one hundred and seventeen dollars, the estimated balance then due on said notes, to be credited by my son on my to him on account of the said trust estate, no part of which had ever been settled by me or accounted for to any one, except in the partial settlement made by the assignment of the three notes to my son in August, 1862, as before stated by me. The said receipt is filed with my aforesaid answer, marked Exhibit No. 17; and probably on the day afterwards I had a full and final settlement with my son, by which I compromised my indebtedness to him on the terms that are set forth in Exhibit No. 19, filed with my answer, which is referred to and is made a part hereof.

23rd. To the twenty-third interrogatory-in-chief the witness
618 answering says: After the notes were surrendered to my son by A. O. Brannin, he carried them to Mississippi, and there had a settle-

ment with Mr. Lyons, the maker of the notes, on or about the twenty-second of June, 1866, at Vicksburg, by which Willie Lyons was released from payment of about twenty-three thousand dollars of the said notes. He paid the said Martin, Cobb & Co., and the said Brannins about ten thousand dollars as before stated, and to my son about eight thousand dollars. For the balance of the said three notes he gave my son Harry H. Christmas two notes for about eight thousand three hundred and thirty-nine dollars and ninety cents each; one payable, I think, the first of December, 1866, and the other the first of February, 1868. This settlement was made by my son without any conference with me, and I was greatly worried at the sacrifice he had made, when I was informed of it; and never would have consented to it, if I had had any authority or control over it.

24th. To the twenty-fourth interrogatory-in-chief the witness answering says: On or about the twelfth day of May, 1866, just after the surrender of the said three notes to my son, and the second assign-
619 ment, I wrote to the said William Yerger, notifying him of the fact, and giving him the particulars of the transaction, and I again wrote to him on the subject in a letter of about the fifth of July, 1866, and he received the letter and replied, but never made any objection to the transfer, or pretended to have any right to object, or to claim any interest in any of said notes, until this litigation sprung up. I certainly would not have notified him immediately of this transfer, if I had had any idea that I was in any way defrauding or attempting to defraud him.

25th. To the twenty-fifth interrogatory-in-chief the witness answering says: I have answered this question substantially in my twenty-third answer to the twenty-third interrogatory as therein stated. There was a settlement on or about the twenty-second of June, 1866, the particulars of which are given in my said twenty-third answer. I was in Louisville at that time, and my information as to the settlement was derived from my son and his attorney, A. Burwell, esquire, whom he employed to arrange the business for him. The settlement was not pro-
620 cured by me, or for my benefit, and I had no interest in the said notes or their proceeds, or either of them, at that time, and never have had any interest in them since, or any note that grew out of them, or out of that settlement.

26th. To the twenty-sixth interrogatory-in-chief the witness answering says: My son has remained in Kentucky until some time over a year, when he moved to San Francisco, where he is now living. My wife, Mary E. Christmas, has been and is now living in Europe, and has been since the spring of 1865. They both have estates separate from me. My wife owns a large and valuable tract of land near Louisville, Kentucky, which is held in trust for her sole use and benefit, and has been for many years; and my son owns all the real estate referred to herein as held in trust for him, except that which was sold, and I have made a deed to him for the same, as shown by deed filed with my original answer, Exhibit No. 18. I have written powers of attorney from both of them, which are on record—that of my wife in the Jefferson County, Kentucky, clerk's office, and that of my son in Issaquena County, Mississippi—by which I am authorised to act for them in relation to
621 their property and the business arising therefrom, and my impression is that the said powers of attorney, or duly certified copies thereof, are filed with my original answer, but am not able to refer to them by exhibit or number.

27th. To the twenty-seventh interrogatory-in-chief the witness an-

swering says: I know of the two notes referred to; I have no interest or claim in either of said notes or their proceeds. One of said notes belongs to my son, Harry H. Christmas; the other to my wife, Mary E. Christmas. Both of said notes were given to my son Harry by the said Willie Lyons, as stated in my twenty-third answer, and the said Harry deposited the first of said notes for $8,339 90 as collateral security for advances to him by Payne, Huntingdon & Co., New Orleans, to the amount of about four thousand dollars to carry on his plantation. While the said note was deposited with the firm of Payne, Huntingdon & Co., the said Harry H. Christmas transferred the said note to the said Mary E. Christmas in consideration of her undertaking to pay said debt due by him to said firm for supplies. The said transfer is on file with my deposition in the case of said H. H. Christmas and others against said
622 Willie Lyons in the records of this court, and the same is hereby referred to. In order for the said Mary E. Christmas to pay said debt for about four thousand dollars, and save said note, it became necessary to sell, at a sacrafice of about one-half its value, real estate held in trust for her sole and separate use, near Louisville, Kentucky, to raise said sum of money, and she paid said debt of my son, and took up the said note out of the proceeds of the sale of her said trust real estate, and in that way paid full consideration for the said note. I have no interest in the said notes, or either of them. One belongs to my wife for her sole and separate use, and is her separate estate; the other belongs to my son, and I have no interest in the event of this suit.

28th. To the twenty-eighth interrogatory-in-chief the witness answering says: I know the handwriting of my co-defendant William Yerger. The original letter, marked No. 3, filed with my answer, is in the handwriting of said Yerger, and is his usual handwriting, and was received by me from him in due course of correspondence with him in reply to my letters to him of the date therein stated.

623 29th. To the twenty-ninth interrogatory-in-chief the witness answering says: I do not recollect anything more material to either party.

30th. To the thirtieth interrogatory-in-chief the witness answering says: Neither the said Harry Hill Christmas nor the said Mary E. Christmas had any knowledge of the claim of the said John W. Russell and others against me at the time the said Lyons notes were transferred to the said H. H. Christmas, so far as I know or believe, and they had no knowledge of the correspondence between the said William Yerger and me, or of any of the transactions connected therewith.

31st. To the thirty-first interrogatory-in-chief the witness answering says: Of the forty thousand dollars realized from the sales of slaves, cotton, and other things belonging to me and my son jointly, as heretofore mentioned, I invested about thirty-eight thousand dollars in cotton in Liverpool. I bought about one hundred and thirty bales, and invested the balance in cotton on margin, giving me control of about six hundred and thirty bales of cotton, as near as I can recollect, with a good prospect of a rise and heavy profits; and as late as May,
624 1866, and July, when I wrote to William Yerger, I hoped out of the profits of this cotton to be able to compromise the Russell claim, and to pay all of my debts, except the one to my son, which I compromised; but, unfortunately, cotton took a downward tendancy, and in October, 1866, I was obliged to sell it out, or rather let it be sold at a sacrafice of everything I had invested in it, except about fifteen hundred dollars.

Cross-interrogatories:

X 1st. To the first cross interrogatory the witness answering says: According to my best recollection, I left Matamoras, Mexico, for New York, via Havanna, some time in May, 1865, and probably arrived in New York in the latter part of May or in June of that year. I reached Liverpool, it may be, in the latter part of that month, or the next. About the same time I went through London, on my way to Paris, France, almost immediately afterwards. I remained there some time; was in London repeatedly after that time; and in one of my visits to London, some time between that time and February, 1866, I met General Walker, of the Texas army, who was then a stranger to me,
625 and on becoming acquainted with him I learned that my son had been on his staff, and was not dead. Shortly after I obtained this information from General Walker, it was confirmed by a letter which I received from my son. I make this statement from recollection, and it is impossible to be acurate in the dates, as have no writing or other memoranda about me from which I am enabled to speak with accuracy.

X 2nd. To the second cross-interrogatory the witness answering says: On my arrival in New York, after I met Mr. A. O. Brannin, I left the said three Lyons notes with him, with no particular instructions except to sell them at fifty cents on the dollar, if he could not get more.

X 3rd. To the third cross-interrogatory the witness answering says: In 1848 I owned a large amount of property, personal and real, and money, and debts due me. I owed a large amount of debts, but I was entirely solvent. There were some judgments against me, and maybe in each county, appearing of record. Many of these judgments had been arranged; others I had receipts for immediately after the
626 rendition of the judgments; some may still appear unsatisfied, but all have been paid to the best of my recollection, whether released of record or not. At any rate, I had ample property to pay them all, and any debt I then owed could have been collected by law; and I always had means and property ample to pay all of my debts up to the war, and for some time after the war, except that to my son; and when I made the assignment to my son in 1862, after transferring him the three notes, I had then largely more than I owed outside of that, and so on as late as 1866, when the second transfer was made to him for the same notes. After the first one had been lost, I had with the cotton I then held in Liverpool, except for the misfortune which overtook me afterwards, an abundance to pay all my debts. Independent of this I have not been insolvent from the time spoken of in the interrogatory, until as the result of the war in losing negroes, cotton, and other things. Finally, in October, 1866, what I put in cotton amounted to about six hundred and thirty bales of cotton, held by actual purchase, and on margin was sunk by decline in prices, and after that I was compelled to go into bankruptcy, and I think on the 29th of October, 1868,
627 was discharged from my debts, as shown by the certificate of discharge filed with my answer as Exhibit No. 19. In 1848 and 1849, at the time referred to, money matters were very tight, and on that account it was difficult to get money to arrange debts, and it was on that account that there were judgments against me, but I had an abundance of property at that time, but could not get the money as certain debts matured, and on that account was sued.

X 4th. To the fourth cross-interrogatory the witness answering says: A portion of said land was acquired by H. R. W. Hill, by decree of the chancery court at Jackson, Mississippi, against me; and a sale under that

decree, at which he purchased, as I think, is set out in the deed to him, and the deed from him to me in trust for my son; and I think he bought other portions of said property from one Miss Allen, and one McCraven, and L. P. Maxwell, and maybe others whose names I do not recollect; but my opinion is that these deeds of trust filed with my answer, as Exhibits Nos. 5, 6, and 7, set out the particulars on this point. My recollection outside of what appears of record is not very accurate
628 that far back, but I think this statement is correct. I am quite certain no part of it was obtained from me by any sale under decree, under a deed of trust or mortgage executed by me to said Hill, on the property, or under any conveyance to secure a debt due by me to him. I have no recollection of my making any such deed of trust or mortgage or conveyance.

X 5th. To the fifth cross-interrogatory the witness answering says: There never was any such deed of trust or mortgage, I am quite certain.

X 6th. To the sixth cross-interrogatory the witness answering says: There was no understanding on the subject, that I have any recollection of; and as I have before stated, I am very sure that no such deed of trust or mortgage is in existence.

X 7th. To the seventh cross-interrogatory the witness answering says: I did remain on the property, and the deed of trust was made for my son's benefit partly on condition I would remain on the property and improve the same for my son, who was named after Mr. Hill, and to whom Mr. Hill was much attached.

629 X 8th. To the eight cross-interrogatory the witness answering says: I may have been instrumental in Mr. Hill's buying the McCraven interest in said lands. I do not recollect really how it was brought about. It is very likely that I had conversations with both of them on the subject, but the purchase was not made for my benefit, but purely on account of my son, and for his benefit. At that time Mr. Hill was worth over two millions of dollars, and wished to make provision for my son Harry, to whom he was very much attached, as I have before stated, and having but one son himself.

X 9th. To the ninth cross-interrogatory the witness answering says: I have no recollection of the transaction occurring in that way, as stated in my last answer. I may have had conversations with both parties on the subject, but have no recollection of having any agency in the matter or giving any directions or instructions about it.

X 10th. To the tenth cross-interrogatory the witness answering says: I have no recollection of the amount paid under the commissioner's sale, but suppose the deed will show. As to any sale under a
630 deed of trust or mortgage, I have no recollection of any such occurrence.

X 11th. To the eleventh cross-interrogatory the witness answering says: My recollection is that he gave less for the land under the commissioner's sale than the amount of the debt, and probably less than the value of the land, as land at that time, in the then condition of the money market, hardly brought its value; but I cannot say certainly, as I have not the amount before me. There was no debt, that I recollect, secured by deed of trust or mortgage.

X 12th. To the twelfth cross-interrogatory the witness answering says: In 1848 and 1849 the money market was so tight, that there but few transactions in real estate, unless under forced sales. The property then seldom brought its value, so I have no proper criterion of the value outside of this. I do not suppose the property brought its full

value—that is, what persons out of debt, who wished to hold such property would take for it—but cannot state what that value was. As to the sale it was a fair in open market, and he bought it at public
631 sale under the decree of court. I have no recollection of any mortgage or intervention of mine in connection with this matter.

X 13th. To the thirteenth cross-interrogatory the witness answering says: My son was eight years old the 25th of December, 1848, and I was about forty-five. The day of my birth is recorded in a bible now in Georgia, and I cannot give the exact day of my birth without a reference to it.

X 14th. To the fourteenth cross-interrogatory the witness answering says: My recollection is that the same draft was sent to me by William Yerger long after its maturity in October, 1860. If I am not mistaken, it was in 1861, after the death of W. P. Anderson. I did not procure its delivery from him or any one for any purpose. My impression is that William Yerger sent it to me by mail, for renewal it may have been, but I rather think it was without any instructions. It was past due, and the war had broken out, and the case was undecided, and no prospect of anything being done in it—at any rate, for a long time—and the matter seemed to be dropped by common consent. At any
632 rate, everything was in great confusion and uncertainty, and the draft was destroyed, and not renewed; and nothing was ever said or done about it afterwards, according to my best recollection.

X 15th. To the fifteenth cross-interrogatory the witness answering says: I have no recollection of hearing anything from them on the subject.

X 16th. To the sixteenth cross-interrogatory the witness answering says: On the 20th of November, 1868, John D. Cobb, of the firm of Martin, Cobb & Co., executed a power of attorney to W. E. Montgomery, of Bolivar County, Mississippi, directing and authorizing the release of the said deed of trust or mortgage, and reciting that the debt secured thereby had been paid to Martin, Cobb & Co., and was fully satisfied, and the same power of attorney was duly executed and filed in the probate court of Bolivar County, Mississippi, and I have no doubt the release was shortly after duly made upon the record-books. At any rate, the debt has long before that time been paid and before the war. The said power of attorney is herewith filed as part hereof, marked "C.'

X 17th. To the seventeenth cross-interrogatory the witness
633 answering says: Not that I am aware of, more than the obligation imposed on me under a general warranty deed, which I think was given.

R. CHRISTMAS.

UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that, on this twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-nine, I, James A. Beattie, a commissioner duly appointed by the circuit court of the United States for the district of Kentucky, and commissioned as such, with power and authority to take acknowledgments of bail, affidavits, and the depositions of witnesses in civil cases, and to exercise the other powers conferred on such commissioners by the acts of Congress, do hereby certify that the reason for taking the foregoing deposition is, that the cause in which the same was taken was one pending in chancery.

I further certify that no notification of the time and place of taking

the said deposition, signed by me, was made out and served on the complainants or their attorneys, to be present at the taking of the
634 deposition, and to put interrogatories, if he or they might think fit, because the said deposition was taken on interrogatories, and none of the parties were present, either in person or by agent or attorney, at the taking of the same.

I further certify that, on the 20th and 21st days of October, A. D. 1869, I was attended by the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness, and from statements; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of mailing the same with my own hand to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this 21st day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

635 [L. S.] JAMES A. BEATTIE,
U. S. Commissioner Circuit Court of the U. S. for the District of Kentucky.

Fees and postage, $25 34, paid by R. Christmas, trustee.
JAMES A. BEATTIE, *Commissioner.*

Exhibit "B" to the foregoing deposition of Richard Christmas is as follows, to wit:

Copy.

Received of R. Christmas three promissory notes of Willie Lyons, all dated 30th November, 1859, each for the sum of sixteen thousand six hundred and sixty-six dollars, all payable to said R. Christmas or bearer at the counting-house of Payne and Harrison, New Orleans, Louisiana, with eight per cent. interest from 20 December, 1859, the first due twelve months after the 20th December, 1859, and the second and third due in twenty-four and thirty-six months after said 20th December, 1859; on the first-mentioned note there is two credits, one of seven thousand dollars, as cash, 17 December, 1860, and four thousand three hundred and twenty-seven dollars and nineteen cents, 20th March, 1861, which notes are in part payment of amount due, to be ascertained,
636 due me on final settlement by said R. Christmas, trustee for me, for lands sold, rents, use of negroes, and all moneys due by him to me as trustee.

Witness my hand and seal this 26 August, 1862.
(Signed) H. H. CHRISTMAS. [SEAL.]

(Endorsed:) Exhibit "B." This is Exhibit B referred to in, and made part of, the annexed deposition of Richard Christmas, taken before me on behalf of the defendants in the case of John W. Russell and others, complainants, against Willie Lyons and others, defendants, now pending in chancery in the circuit court of the United States for the southern district of Mississippi, on the 20th and 21st days of October, 1869.
JAMES A. BEATTIE, *Commissioner.*

Exhibit "C" referred to in the foregoing deposition of R. Christmas is as follows, to wit:

Know all men by these presents that I, John D. Cobb, of the city of New Orleans, and State of Louisiana, acting for my late firm of Martin, Cobb & Co., in liquidation, have this day nominated and appointed, and by these present do nominate, constitute, and appoint, W. E. Montgomery, of the county of Bolivar, and State of Mississippi, my lawful attorney, for me, and in my name and behalf, as acting partner as
637 aforesaid, to enter full receipt of payment and satisfaction on a certain deed of mortgage entered into on the first day of September, A. D. 1858, between R. Christmas, and Mary E. Christmas, his wife, of the county of Issaquena, and State of Mississippi, of the first part, and the said Martin, Cobb & Co., of the second part, whereby certain lands in said county of Bolivar were conveyed for securing the payment of certain bills of exchange and advances of money therein mentioned, which deed is of record in the office of the clerk of the probate court of the county of Bolivar aforesaid, in Book A, pages 14, 15, 16, & 17.

And whereas the bills of exchange and advances of money enumerated in said mortgage have been paid and satisfied the said parties of the first part, I hereby *hereby* authorize the above-named W. E. Montgomery, for me, as if I was personally present, and as acting partner as aforesaid, to enter full receipt of payment and satisfaction on said deed of mortgage now of record, as before mentioned.

In testimony whereof I have hereunto set my hand and seal this 20th day of November, A. D. 1868.

[L. S.] JNO. D. COBB,
For Martin, Cobb & Co. in liq'n.

[Stamped & cancelled.]

638 CITY OF NEW ORLEANS,
Parish of Orleans, State of Louisiana:

Personally appeared before me, a commissioner duly commissioned by the executive of the State of Mississippi to administer oaths and affidavits, and to take acknowledgments of deeds and all other instruments of writing intended to be used in said State of Mississippi, John D. Cobb, known to me as a citizen of Louisiana, who acknowledged the annexed instrument of writing to be his act and deed, and desired the same to be recorded as such.

JNO. D. COBB.

In testimony whereof I hereunto affix my signature and official seal this 20th day of Nov'r, A. D. 1868.

[L. S.] ALFRED INGRAHAM.

STATE OF MISSISSIPPI, *Bolivar County:*

I, H. T. Florey, clerk of the probate court in and for said county, do hereby certify that the foregoing power of attorney, duly stamped and filed for record in my office this day, is now duly recorded in Deed Book L, page 391.

Witness my hand and official seal this the 19th day of April, A. D. 1869.

[L. S.] H. T. FLOREY, *Clerk,*
By A. D. MELCHIOR, *D. C.*

639 (Endorsed:) "C." This is Exhibit "C" referred to in, and made part of, the annexed deposition of Richard Christmas, taken be-

fore me on behalf of the defendants in the case of John W. Russell and others, complainants, against Willie Lyons and others, defendants, now pending in chancery in the circuit court of the United States for the southern district of Mississippi, on the 20th and 21st days of October, A. D. 1869.

JAMES A. BEATTIE, *Commissioner.*

Filed and recorded in Deed Book L, page 391, this 19th April, A. D. 1859.

H. T. FLOREY, *Clerk,*
A. D. MELCHIOR, *D. C.*

Clerk's fee, $1 50.

Filed 28th Octo., 1869.

GEO. T. SWANN.

Opened by order of court Nov. 2, '69.

GEO. T. SWANN, *Clerk.*

Deposition of O. A. Brannin.

UNITED STATES OF AMERICA:

Circuit court of the U. S., 5th circuit and southern district of Mississippi.

JNO. W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. } 86.—In chancery.

Interrogatories to be propounded to A. O. Brannin, a witness for
640 defendants H. H. Christmas, Mary E. Christmas, and Richard Christmas, the answers to which will be read in evidence on the trial of the above-entitled cause in behalf of said defendants.

Int. 1st. Are you acquainted with defendants H. H. Christmas, Richard Christmas, and Mary E. Christmas, or either of them?

Int. 2nd. Were you or not temporarily residing in the city of New York in the years 1865 and 1866? If yea, how long were you there, and what was your occupation in New York while there?

Int. 3rd. Did you or not meet defendant Richard Christmas at any time while in New York, during the period referred to in the previous interrogatory? If yea, at what time did you meat said Richard?

Int. 4th. If you say you did meet said Richard in New York, state also whether said Richard left with you any promissory notes or bills receivable; and, if yea, describe the said notes or bills receivable so left with you; give the number of the same, date, amount, and to whom payable, and when due; and state also how long you held possession of said paper, and whether or not the same, or any portion of it, was
641 at any time attached in your hands by legal process; and, if yea, by whom, and for what cause, and at what time, and where?

5th. Did you ever re deliver said paper to said Richard Christmas? What disposition was finally made of said paper?

6th. Do you know anything else of value to said defendants, or either of them? If yea, state the same.

JOHN D. FREEMAN,
Sol. for Def'ts.

1 x-int. State for what purpose said notes or bills receivable were left with you, and what you did with the same.

2 x-int. If more than one note was left with you, state how many, and the date, and amount of each, and what was due on each of said notes when left with you.

W. AND J. R. YERGER.

We agree that the deposition of A. O. Brannin may be taken by any party authorised to take depositions in the Federal courts on the foregoing interrogatories and cross-interrogatories, without further notice or commission, and may be read in the cause without objection, except as to competency of witness or the evidence; all form being waived.

W. AND J. R. YERGER,
Sol's for W. Yerger and F. Anderson.
W. P. HARRIS,
For Complainants.

642 UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that on this twelfth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, I, James A. Beattie, a commissioner duly appointed by the circuit court of the United States for the district of Kentucky, and commissioned as such, with power and authority to take acknowledgments of bails, affidavits, and the depositions of witnesses in civil cases, and to exercise the powers conferred on such commissioners by the acts of Congress, did call and cause to be and personally appear before me, at my office in the city of Louisville, and State aforesaid, in pursuance of the annexed agreement, A. O. Brannin, to testify and the truth to say on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the fifth circuit and southern district of Mississippi, wherein John W. Russell et als. are complainants, and Willie Lyons et als. are defendants, No. 86, in chancery. And the said A. O. Brannin being about the age of forty-
643 nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said A. O. Brannin, and he did thereupon depose, testify, and say as follows, viz:

In answer to the interrogatories-in-chief and cross-interrogatories hereto annexed:

1. To the first interrogatory-in-chief the witness answering says: I am acquainted with Richard Christmas and H. H. Christmas, but do not know Mary E. Christmas.

2. To the second interrogatory-in-chief the witness answering says: I was residing temporarily in New York from October, 1864, till September, 1865; I was engaged in banking.

3. To the third interrogatory-in-chief the witness answering says: I met Richard Christmas in the early part of the summer of 1865 in New York.

4. To the fourth interrogatory-in-chief the witness answering says: Richard Christmas left with me, while in New York, three promissory notes of Willie Lyons, each dated the 30th of November, 1859, payable to the order of said Christmas or bearer, at the counting-house
644 of Payne and Harrison, New Orleans, Louisiana. Each note was for sixteen thousand six hundred and sixty-six dollars, and due

twelve, twenty-four, and thirty-six months respectively after the 20th of December, 1859, with eight per cent. interest from that date. One of said notes, I believe the first, had two credits endorsed on it, one of the 17th December, 1860, of $7,000 00, and the other of the 20th of March, 1861, of $5,327 19. The said notes were in my possession from the time of their delivery to me, as stated, in New York, until about the 7th of May, 1866. Some time previous to this these notes had been attached or garnisheed in my hands in a suit, in the Louisville chancery court, Kentucky, of Martin, Cobb & Co., against Richard Christmas, for an account claimed to be due them of about $10,000 00. This suit was settled by an agreement between said Martin, Cobb & Co., and the said Christmas and his son Harry H. Christmas, that the attachment should be discharged, and the said claim paid out of the proceeds of the first collection of any one of said notes; and an endorsement was made on each of said notes to that effect, according to my recollection; and
645 J. S. Brannin and myself were to receive of the said sum to be paid to Martin, Cobb & Co., the sum of $4,075 07, which the firm of Martin, Cobb & Co. owed us. While the attachment was pending, Harry A. Christmas came to Louisville, and, being notified of this proceeding, claimed that these notes belonged to him, but consented that this claim might be paid out of them, and insisted that the notes should be turned over to him. This arrangement was made, and the substance of it reduced to writing at the time, and signed by all the parties, and a true copy of the original writing left with me, and I now file the same herewith as part of my deposition, marked "A." After this arrangement was executed, the attachment was discharged, and the said three notes were surrendered to the said Harry H. Christmas.

5. To the fifth interrogatory-in-chief the witness answering says: My recollection is that the said notes were delivered by me to the said Harry H. Christmas, and not to the said Richard Christmas.

6th. To the sixth interrogatory-in-chief the witness answering says: I do not know anything else that I can remember material to either party.

646 Cross-interrogatories:

X 1. To the first cross-interrogatory the witness answering says: The notes were left with me for sale. I did not sell them, but retained them in my possession until they were attached, as I have before stated. When the settlement was made by which the said Harry H. Christmas agreed to pay out of the said notes the amount claimed by the said attaching creditors, I turned them over to him.

X 2. To the second cross-interrogatory the witness answering says: There were three notes, and the dates and amounts are correctly given by me in my answers to the interrogatories-in-chief. The whole amounts of said notes were due, subject to the credits on one, as I have before stated.

A. O. BRANNIN.

UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that, on this twelfth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, I, James A. Beattie, a commissioner duly appointed by the circuit court of the United States for the district of Kentucky, and commissioned as such, with
647 power and authority to take acknowledgments of bail, affidavits, and the depositions of witnesses in civil cases, and to exercise the

other powers conferred on such commissioners by the acts of Congress, do hereby certify that the reason for taking the foregoing deposition is, that the cause in which the same was taken was one pending in chancery.

I further certify that no notification of the time and place of taking the said deposition, signed by me, was made out and served on the complainants or their attorneys, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because the said deposition was taken on interrogatories, and none of the parties were present, either in person or by agent or attorney, at the taking of the same.

I further certify that on the twelfth day of October, A. D. 1869, I was attended by the witness, who was of sound mind and of lawful age, and the witness was by me carefully examined, and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing, in the presence of the witness, and from his statements; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said depositions in my pos-
648 session for the purpose of mailing the same with my own hand to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this twelfth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

[L. S.] JAMES A. BEATTIE,
U. S. Commissioner Circuit Court of the U. S. for the District of Kentucky.

Fees and postage, $4 27, paid by R. Christmast, trustee.
JAMES A. BEATTIE, *Commissioner.*

Exhibit "A," referred to in the foregoing deposition of A. O. Brannin, is as follows, to wit:

"A."

THOMAS J. MARTIN, &C., PLAINTIFFS,
against
R. CHRISTMAS, DEFENDANT.

This argeement, made this 7th day of May, 1866, between the plaintiff and defendant and A. O. and J. S. Brannin, garnishees, witnessess
649 that the following notes, all dated 30th November, 1859, each for sixteen thousand six hundred and sixty-six dollars, one payable twelve months after 20th December, 1859, and one two years after 20th December, 1859, and one three years after 20th December, 1859, and all bearing interest at the rate of eight per centum per annum, after the 20th December, 1859, made by Willie Lyons to Richard Christmas or bearer and attached herein for the debt set up in the petition, one with a credit of seven thousand dollars ($7,000) on the 17th Dec., 1860, and five thousand three hundred and twenty-seven $\frac{19}{100}$, ($5,327 19,) 20th March, 1861, paid on the note due (12) twelve months after date, have this day been surrendered to Harry Hill Christ-

mas, to be by him collected; and the debt sued for in this petition, with eight per cent. interest thereon from 1st October, 1865, till paid, is to be paid in full out of and with the first payments made by said Lyons on said notes, or either of them; and each of said notes to bear an endorsement that the first thereon on either of them are to be applied to the payment of the said debt, and in consideration thereof the said suit is to be dismissed; and the said Harry Hill Christmas agrees
650 and binds himself to perform faithfully the foregoing agreement, and to use his best endeavors to collect said notes, and that said debt in that petition claimed shall first be paid.

It is further agreed and understood that the said A. O. and J. S. Brannin are entitled to and shall have four thousand six hundred ninety-five $\frac{7}{100}$ dollars, ($4,695 07,) with said interest from 27th March, 1866; and the said plaintiffs shall have five thousand dollars ($5,000) of said debt, with interest from said 1st October, 1865, at 8% per annum, in full settlement of the claim sued on.

(Signed) MARTIN, COBB & CO.,
In liquidation.
A. O. AND JNO. S. BRANNIN.
R. CHRISTMAS.
HENRY H. CHRISTMAS.

LOUISVILLE, 9 *May*, 1866.

The above-described notes have been this day received by me, endorsed according to the foregoing agreement.

(Signed) HARRY J. CHRISTMAS.

This paper is a true copy of the original in our hands.

(Signed) MARTIN, COBB & CO.,
In liquidation.

This is Exhibit "A," referred to in, and made part of, the annexed deposition of A. O. Brannin, taken before me on behalf of the de-
651 fendants in the case of John W. Russell and others, complainants, against Willie Lyons and others, defendants, now pending in chancery in the circuit court of the United States for the southern district of Mississippi, this twelfth day of October A. D. 1869.

JAMES A. BEATTIE, *Commissioner.*

This deposition sealed up by me.

JAMES A. BEATTIE, *Commissioner.*

Filed 28th Octo., 1869.

GEO. T. SWANN, *Clerk.*

Opened by order of court Nov. 2, 1869.

G. T. SWANN, *Clk.*

Deposition of B. Douthit.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

The President of the United States of America to James A. Beattie, esquire, greeting:

Know ye that in confidence of your prudence and fidelity you have been appointed, and are hereby invested with full power and authority,

to examine A. M. Young and B. Douthit on their corporal oaths,
652 as witnesses in a cause depending in the circuit court of the United States for the southern district of Mississippi, wherein John W. Russell and others are complainants, and Willie Lyons, Richard Christmas, H. H. Christmas, Mary E. Christmas, and others are defendants, on the part of the said defendants, upon the interrogatories and cross-interrogatories annexed to this commission; and therefore you are hereby commanded that, at certain days and places to be appointed by you for that purpose, you do cause the said A. M. Young and B. Douthit to come before you, and then and there examine them on oath upon the said interrogatories and cross-interrogatories, and that you take such examination, and reduce the same into writing, and return the same closed up under your seal, annexed to this commission, into the said circuit court, before the judges thereof, at Jackson, in said district, with all convenient speed.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court hereto affixed, at Jackson, in said district, this 8th day of October, A. D. 1869.

[L. S.] GEO. T. SWANN, *Clerk.*

653 UNITED STATES OF AMERICA:

In the circuit court of the U. S., 5th circuit and so. dist. of Miss.

JOHN W. RUSSELL ET AL.
vs.
WILLIE LYONS, H. H. CHRISTMAS, Mary E. Christmas, Richard Christmas, and others. } N. S., 86.—Chancery.

Interrogatories to be propounded to A. M. Young and B. Douthit, witnesses for said defendants, Mary E., H. H., and R. Christmas, the answers to which will be read in evidence on the trial of the above-entitled cause on the part of said defendants.

Int. 1st. Are you acquainted with defendants Richard, H. H., and Mary E. Christmas, or either of them? If yea, when and where did you know them, or either of them? If you had any business relations with them, or either of them, state what the same were, and whether or not you met the defendants, or either of them, in Texas during the years 1862, '3, and '4.

Int. 2. Look at Exhibit A, hereto attached, and state, if you know, who was the owner of the originals of the three promissory notes there described, at any time between the month of August, A. D. 1862, and the 1st of Jan'y, 1865. Did you see any person or persons in
654 possession of said three promissory notes, or either of them, during that period of time? If yea, state all you know in relation to the possession and ownership of said notes by any person or persons during that period of time, or any part thereof.

Int. 3rd. Were you present at any time when any conversation, contract, or agreement was had or made by or between said defendants Richard and H. H. Christmas in relation to said notes, or either of them? If yea, state all that occurred in relation to said notes in your presence or hearing.

Int. 4th. State anything else you may know of value to said defendants in relation to the subject-matter of these interrogatories.

JOHN D. FREEMAN,
Sol. for said Def'ts.

Copy.—Exhibit "A."

$16,666. NOVEMBER 30TH, 1859.

Twelve months after the 20th day of December next, (1859,) I promise to pay Richard Christmas, or bearer, sixteen thousand six hundred and sixty-six dollars, value received, payable at the counting-house of Payne and Harrison, New Orleans, La., and bearing eight per centum per annum from the 20th day of December, A. D. 1859, until paid.

WILLIE LYONS.

655 Also two other notes of same date, for same amount, and same tenor and effect, made by same party to the same party, but payable two and three years from the 20th day of December, A. D. 1859, respectively.

Notice.

The complainants in the above cause, or Harris and Withers, their counsel, will take notice that in ten days after service on them of a copy of these interrogatories and exhibit, a commission will issue according to law, to take the deposition of the witnesses therein named.

JOHN D. FREEMAN,
Sol. for said Def'ts.

We acknowledge service of the above interrogatories and exhibit for complainants this 24th Sept., A. D. 1869.

HARRIS AND WITHERS,
Sol's for Compl'ts.

Filed 25th Sept., 1869.

GEO. T. SWANN, *Cl'k.*

Cross-interrogatories by complainants to A. M. Young and B. Douthit.

1st. State how long you were in the employment of Richard Christmas or H. H. Christmas; when you left such employment; where you have resided since; and where you now reside.

656 2nd. State whether since 1865 you have had conversations with Richard Christmas touching the matters to which the interrogatories relate, or with H. H. Christmas. If yea, state where and when, and what part of the statements you have made to the interrogatories are made on your personal knowledge of the facts, and the part made on the information derived from the said Richard and H. H. Christmas.

3rd. If you were present at any settlement between said H. H. Christmas and Richard Christmas, state to what such settlement related. Give the particulars, and state to what it referred; if to property, to what property.

4th. If, in your answer to the 2nd direct question of the defendants, you say you ever saw the notes of which the exhibit to said question purports to be copies, state when and where and how you happened to see them; and if they were shown to you by any one, for what purpose.

7th. State how you know the owner of said notes, and by what means you ascertained the ownership. Give the date or time when you saw said notes.

6th. State whether or not you conversed with or corresponded with

Richard or H. H. Christmas on the subject of your examina-
657 tion in this case as a witness.

HARRIS AND WITHERS,
Sol. for Compl'ts.

Filed 5th Octo., 1869.

GEO. T. SWANN, *Clerk.*

SOUTHERN DISTRICT OF MISSISSIPPI, *ss:*

I, George T. Swann, clerk of the circuit court of the United States for the said district, hereby certify that the preceding 4 pages contain a full and true copy of the interrogatories and cross-interrogatories, exhibit, and notice, with the acknowledgement of service thereof, filed in a cause therein pending and undetermined, wherein John W. Russell et al. are complainants, and Willie Lyons et al. are defendants, as the same remain on file in said court.

Given under my hand, with the seal of said court affixed, at Jackson, in said district, this 5th day of October, A. D. 1869.

[L. S.] GEO. T. SWANN, *Clerk.*

UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that on this twenty-second day of October, in the year of our Lord one thousand eight hundred and sixty-nine,
658 I, James A. Beattie, a commissioner, duly appointed by the circuit court of the United States for the district of Kentucky, and commissioned as such, with power and authority to take acknowledgments of bail, affidavits, and the depositions of witnesses in civil cases, and to exercise the other powers conferred on such commissioners by the acts of Congress, did call, and cause to be and personally appear before me, at my office, in the city of Louisville, and State aforesaid, in pursuance of the annexed commission, B. Douthit, to testify and the truth to say, on the part and behalf of the defendants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein John W. Russell and others are complainants, and Willie Lyons and others are defendants, in chancery No. 86.

And the said B. Douthit being about the age of thirty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said B. Douthit, and he did thereupon depose, testify, and say as follows, viz:

659 In answer to the interrogatories and cross-interrogatories hereto attached:

Interrogatories-in-chief:

1st. To the first interrogatory-in-chief the witness answering says: I have known the defendants Mary E. Christmas, H. H. Christmas, and Richard Christmas since about 1856. I knew them all in Issaquena County, Mississippi, when managing the plantation affairs of said R. Christmas, in said county, for about five years. I had no other business relations with them. I met Col. R. Christmas and his wife in Texas in 1863 and 1864 several times, but did not meet or see Harry H. Christmas.

2nd. To the second interrogatory-in-chief the witness answering says: I cannot say who was the owner of the notes described by Exhibit "A," attached to the interrogatories, between August, 1862, and January,

1865. I saw three notes corresponding with those mentioned in the possession of Harry H. Christmas in August, 1862. About that time I was living in Louisiana, nearly opposite where Col. R. Christmas lived, and I heard his son Harry was at home, and just from the army.
660 I went over to pay them a visit while he (Harry) was there. During my visit I heard them have several conversations about some settlement between them, and I saw R. Christmas write up an assignment of three notes to his son Harry, and give the notes to him. They were notes on Willie Lyons for about sixteen or seventeen thousand dollars each, which had been given to R. Christmas in part payment for a plantation which he had sold to Mr. Lyons in 1859, while I was living with and managing for R. Christmas.

3rd. To the third interrogatory-in-chief the witness answering says: The only conversation or arrangement between them as to the three notes that I remember was at the time just mentioned in my last answer, in which I have stated about what occurred.

4th. To the fourth interrogatory-in-chief the witness answering says: I have stated all I remember of any consequence.

Cross-interrogatories:

X 1st. To the first cross-interrogatory the witness answering says: I was in the employment of R. Christmas about five years,
661 and left, I think, in 1860, and went then across the Mississippi River into Louisiana, nearly opposite of the river, and lived there some time, and then went to Texas, and stayed there part of 1863 and 1864, and in 1865 settled in Issaquena County, Mississippi, where I now live. I was never in the employment of Harry Christmas. I mean, when I say that I moved across the Mississippi River, that I then went to live at a place on said river nearly opposite to where R. Christmas lived.

X 2nd. To the second cross interrogatory the witness answering says: In the latter part of 1865, the exact time I do not remember, I met Harry H. Christmas in Louisville, Kentucky, and he spoke of having sent these notes to his father, at Matamoras, Mexico, while he was in the Texas army, and said he had written repeatedly to his father in Europe, but had been unable to hear from him, or get any information of these notes, which he seemed very anxious about, and said if he had them he would be able to go into business, and he was then out of employment. The only other conversation I *rember* to have had with either of them since that time, on the subject of these notes, was with R.
662 Christmas last month, when I met him in Issaquena County, Mississippi; and, since I came to Louisville, he called my attention to the transaction which occurred at his house in 1862 as to said notes. I told him I remembered it distinctly, and he mentioned this suit to me, and told me it would be necessary to take my deposition, which I consented to give. Since I came to Louisville I have met him, and had several casual conversations with him on the subject. The statements made by me as to what occurred at R. Christmas' house in August, 1862, as to the transfer of these notes, are made from my personal knowledge. I recollect the occurrence distinctly. My answers show whether what I have said is stated from my own knowledge or from conversations with others.

X 3rd. To the third cross-interrogatory the witness answering says: As before stated, I was present in August, 1862, when some kind of settlement was made between them. It related to what R. Christmas owed his son Harry on account of his property, which his father had been

using, and other matters between them. I don't know the particulars.

663 While I was attending to R. Christmas' business he kept a book, which I had constant access to, in which he had an account of some large indebtedness to his son, and this settlement had reference to this claim.

X 4th. To the fourth cross-interrogatory the witness answering says: I have stated already that I saw the three notes in August, 1862, when they were transferred to H. H. Christmas. I saw them while I was on a visit, as before stated; was present at conversations between them on the subject, and saw the transfer and the notes delivered to Harry H. Christmas. They were not shown to me for any particular purpose, but being there, and intimate with the family, I witnessed the transaction.

X 5th. To the fifth cross-interrogatory the witness answering says: I have just stated fully in my last answer what I know on this subject. I don't know who is now the owner of said notes.

X 6th. To the sixth cross-interrogatory the witness answering says: I never corresponded with either of them on the subject, and had no conversation with either of them, except with R. Christmas, as fully stated in my second answer to the second cross-interrogatory.

B. DOUTHIT.

664 UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that on this twenty-second day of October, in the year of our Lord one thousand eight hundred and sixty-nine, I, James A. Beattie, a commissioner duly appointed by the circuit court of the United States for the district of Kentucky, and commissioned as such, with power and authority to take acknowledgments of bail, affidavits, and the depositions of witnesses in civil cases, and to exercise the other powers conferred on such commissioners by acts of Congress, do hereby certify that the reason for taking the foregoing deposition is, that the cause in which the same was taken was one pending in chancery.

I further certify that no notification of the time and place of taking the said deposition, signed by me, was made out and served on the complainants or their attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because the said deposition was taken on interrogatories, and none of the parties were present, either in person or by agent or attorney, at the taking of the same.

665 I further certify that on the twenty-second day of October, A. D. 1869, I was attended by the witness, who was of sound mind and lawful age, and witnes was by me carefully examined and cautioned and sworn to testify the whole truth, and the deposition was by me reduced in the presence of the witness and from his statements; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my posession, for the purpose of mailing the same with my own hand to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this 22nd day of October, in the year of our Lord one thousand and sixty-nine, and of the independence of the United States the ninety-fourth.

[L. S.] JAMES A. BEATTIE,
U. S. Commissioner Circuit Court of the U. S. for the District of Kentucky.

Fees and postage, $5 12, paid by R. Christmas, trustee.

JAMES A. BEATTIE, *Commissioner.*

666 (Endorsed:)
This deposition sealed up.

JAMES BEATTIE, *Commissioner.*

Filed 28th Octo., 1869.

GEO. T. SWANN, *Clerk.*

Opened by order of court Nov. 2, 1869.

GEO. T. SWANN, *Clerk.*

Deposition of A. M. Young.

The President of the United States to Aug. W. Alexander, esqr., or any other commissioner of the United States, greeting:

Know ye that in confidence of your prudence and fidelity you have been appointed, and are hereby invested with full power and authority, to examine A. M. Young, and B. Douthit, on their corporal oaths, as witnesses in a case depending in the circuit court of the United States for the fifth circuit and southern district of Mississippi, wherein John W. Russell and others are complainants, and Willie Lyons, and Richard Christmas, H. H. Christmas, Mary E. Christmas, and others, are defendants, on the part of said defendants, upon the interrogatories and cross-interrogatories annexed to this commission; and therefore you are hereby commanded that you, at certain days and places to be ap-
667 pointed by you for that purpose, do cause the said A. M. Young and B. Douthit to come before you, and then and there examine them, on oath, upon the said interrogatories and cross-interrogatories, and that you take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up, under your seal, into the said circuit court, before the judges thereof, at Jackson, in said district, with all convenient speed.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Jackson, in said district, this 8th day of October, A. D. 1869.

[L. S.] GEO. T. SWANN, *Clerk.*

UNITED STATES OF AMERICA:

In the circuit court of the U. S., 5th circuit and southern district of Mississippi.

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS, H. H. CHRISTMAS, MARY E. Christmas, Richard Christmas, and others. } N. S., 86.—Chancery.

Interrogatories to be propounded to A. M. Young and B. Don-
668 thit, witnesses for said defendants Mary E., H. H., and R. Christmas, the answers to which will be read in evidence on the trial of the above-entitled cause on the part of the said defendants.

Int. 1st. Are you acquainted with defendants Richard, H. H., and Mary E. Christmas, or either of them? If you had any business rela-

tions with them, or either them, state what the same were, and whether or not you met said defendants, or either of them, in Texas during the years 1862, '3, & 4?

Int 2d. Look at Exhibit "A" hereto attached, and state, if you know, who was the owner of the originals of the three promissory notes there described, at any time between the month of August, A. D. 1862, and the 1st of Jan'y, 1865. Did you see any person or persons in possession of said three promissory notes, or either of them, during that period of time? If yea, state all you know in relation to the possession and ownership of said notes by any person or persons during that period of time, or any part thereof.

Int. 3rd. Were you present at any time when any conversation, contract, or agreement was had or made by or between said defend-
669 ants Richard and H. H. Christmas in relation to said notes, or either of them? If yea, state all that occurred in relation to said notes in your presence or hearing.

Int. 4th. State anything else you may know of value to said defendants in relation to the subject-matter of these interrogatories.

JOHN D. FREEMAN,
Sol. for said Def'ts.

Copy.—Exhibit "A."

$16,666. NOVEMBER 30TH, 1859.

Twelve months after the 20th day of December next, (1859,) I promise to pay Richard Christmas, or bearer, sixteen thousand six hundred and sixty-six dollars, value received, payable at the counting-house of Payne & Harrison, New Orleans, La., and bearing eight per centum per annum from the 20th day of December, A. D. 1859, until paid.

WILLIE LYONS.

Also two other notes of same date, for same amount and same tenor and effect, made by same party, but payable two and three years from the 20th day of December, A. D. 1859, respectively.

Notice.

The complainants in the above cause, or Harris and Withers,
670 their counsel, will take notice that ten days after service on them of a copy of these interrogatories and exhibit a commission will issue according to law, to take the depositions of the witnesses therein named.

JOHN D. FREEMAN,
Sol. for said Def'ts.

We acknowledge service of a copy of the above interrogatories and exhibit for complainants this 24th Sept., A. D. 1869.

HARRIS AND WITHERS,
Sol's for Compl'ts.

Filed 25 Sept., 1869.

GEO. T. SWANN, *Clk.*

Cross-interrogatories by complainants to A. M. Young and B. Douthit.

1. State how long you were in the employment of Richard Christmas or H. H. Christmas; when you left such employment; where you have resided since; and where you now reside.

2d. State whether since 1865 you have had conversations with Richard Christmas touching the matters to which the interrogatories relate, or with H. H. Christmas. If yea, state when and where, and what part of the statements you have made to the interrogatories are made on your personal knowledge of the facts, and the part made on the
671 information derived from said Richard and H. H. Christmas.

3rd. If you were present at any settlement between said H. H. Christmas and Richard Christmas, state to what such settlement related; give the particulars, and state to what it referred; if to property, to what property.

4th. If in your answer to the 2d direct interrogatory of the defendants, you say you ever saw the notes of which the exhibit to said question purports to be copies, state when and where, and how you happened to see them; and if they were shown to you by any one, for what purpose.

5th. State how you know the owner of said notes, and by what means you ascertained the ownership. Give the date or time when you saw said notes.

6th. State whether or not you conversed with or corresponded with Richard or H. H. Christmas on the subject of your examination in this case as a witness.

HARRIS AND WITHERS,
Sol. for Compl'ts.

Filed Octo. 5th, 1869.

GEO. T. SWANN, *Clk.*

SOUTHERN DISTRICT OF MISSISSIPPI, *ss:*

I, Geo. T. Swann, clerk of the circuit court of the United States
672 for said district, hereby certify the foregoing three pages contain a true copy of the interrogatories and cross-interrogatories filed in the cause in said court pending, therein referred to, as the same remain on file in said cause.

Given under my hand, with the seal of said court hereunto affixed, at Jackson, in said district, this 8th day of October, A. D. 1869.

[L. S.] GEO. T. SWANN, *Clerk.*

UNITED STATES OF AMERICA, *Missouri Districts, ss:*

In obedience to and execution of the commission hereto annexed, on the seventh day of January, A. D. 1870, I caused A. M. Young, one of the persons named in said commission as a witness, to come before me, Augustus W. Alexander, commissioner of the United States for said districts, duly appointed by the circuit court of the United States for said Missouri districts, at the residence of said A. M. Young, in said districts, and then and there caused him to be duly and solemnly sworn to testify the truth, the whole truth, and nothing but the truth of his knowledge touching a matter in controversy in the circuit court
673 of the United States for the fifth circuit and southern district of Mississippi, wherein John W. Russell and others are complainants, and Willie Lyons, Richard Christmas, H. H. Christmas, Mary E. Christmas, and others are defendants; and I thereupon proceeded to examine said A. M. Young upon the interrogatories and cross-interrogatories annexed to said commission, and reduced his answers thereto to writing in his presence, which were and are as follows, to wit:

In answer to the first interrogatory witness saith: I am acquainted

with defendants R. Christmas, H. H. Christmas, and Mary E. Christmas; I have known them 15 or 20 years, in Mississippi, Kentucky, and Texas; I never had any special business relations with them or either of them; we were always on very intimate terms, and in 1863 or 1864, in Texas, I aided R. Christmas in shipping some cotton.

2. In answer to the 2d interrogatory witness saith: I have examined Exhibit "A," and do not know who was the owner of the originals of the three promissory notes therein described, at any time between
674 the month of August, A. D, 1862, and the 1st of January, 1865. I did not see any person or persons in possession of said three promissory notes, or either of them, during that period of time. I know nothing in relation to the possession and ownership of said notes during that period of time, or any part thereof, except that Harry H. Christmas was at my house in Texas during the years 1863 and 1864 frequently, and had papers there which he said were valuable.

3. In answer to the 3rd interrogatory witness saith: I don't remember ever to have been present at any conversation or agreement between the said R. Christmas and H. H. Christmas in relation to said notes, or either of them.

4. In answer to the 4th interrogatory witness saith: I don't recollect anything else material to either party.

Cross-interrogatories:

1. In answer to the 1st cross-interrogatory witness saith: I never was in the employment of Richard Christmas or of H. H. Christmas,
675 except that in 1863 or 1864, while in Texas together, I helped R. Christmas ship some cotton, and looked after his buisness a little in his absence, at his request, as a friend, without compensation. I continued to live in Texas some time afterward, and then moved to Kentuck, near Lexington, where I resided until lately, when I moved to St. Louis, Missouri, where I now reside.

2. In answer to the 2d cross-interrogatory witness saith: I don't recollect having but one conversation with R. Christmas touching the matters to which the interrogatories relate, and have had none with H. H. Christmas. The conversation with R. Christmas was some time during the fall of last year. I met him in St. Louis, Mo.; at that time my health was so feeble that I could talk with him very little; but he had a receipt with him, given to him by his son, Harry H. Christmas, in 1862, for the three notes referred to. I was familiar with his son's handwriting, and he requested me to mail the original receipt to Gen. John D. Freeman, attorney-at-law, at Jackson, Mississippi, and retain a copy, as I was the only person convenient who could prove his
676 son's handwriting. I mailed the original receipt to Gen. Freeman, at Jackson, Mississippi, as requested, and I retain a copy thereof, which I return as part of my deposition, marked "B." The original, of which this is a copy, was in Harry H. Christmas' handwriting, and signed by him. I have had no other conversation with him except on general subjects, and not much of any kind, as my health is such that I am not able to, or allowed by my physician to do so. My statements are made from my personal knowledge and recollection, and not from any information from any one.

3. In answer to the 3rd cross-interrogatory witness saith: I was not present at any settlement between R. Christmas and Harry H. Christmas.

4. In answer to the 4th cross-interrogatory witness saith: My answer to the question is, that I never saw the notes to my recollection.

5th. In answer to the 5th cross-interrogatory witness saith: I don't know the ownership of said notes, for the reason that I never saw them.

677 6. In answer to cross-interrogatory 6th witness saith: I have had no conversation or correspondence with H. H. Christmas on the subject of my examination in this case as a witness; and only with R. Christmas as stated in my answer to cross-interrogatory 2 herein, except that since that time he notified me by letter that he desired to get my deposition; that the receipt I mailed to Gen'l Freeman had not been received by him, and that it was desired that I should make proof of it. I told him, or wrote to him, that I was going, as soon as I could move with safety, to New Orleans for medical treatment, and he then wrote to me to know if I could come by Louisville and give my deposition there; but I could not do so, and think wrote to him to that effect.

A. M. YOUNG.

Sworn to and subscribed before me this 7th day of January, A. D. 1870.

AUG. W. ALEXANDER,
U. S. Com'r for Mo. Dist's.

I further certify that I examined said witness A. M. Young fully upon every of said interrogatories and cross-interrogatories, and
678 reduced his answers fully to writing, and that said answers are hereinbefore fully and truly set forth; that the same were read over to said witness by me before his signing them; that he signed said examination and answers in my presence; that while all of said acts and things hereinbefore set forth were said, written, and done, no one was present except said witness A. M. Young and myself; that the oath to said witness hereinbefore mentioned was duly and lawfully administered by me; that the paper annexed hereto, marked Exhibit "B," is the identical paper referred to by said witness in his answer to 2 cross-interrogatory, and is endorsed by my official signature.

Done and certified at said Missouri districts on the seventh day of January, A. D. 1870.

AUG. W. ALEXANDER,
U. S. Com'r for Mo. Dist's.

Com'r's fee, $10, paid by R. Christmas.

Exhibit "B," referred to in foregoing deposition, is as follows, to wit:

Copy.—Exhibit "B."

Received of R. Christmas three promissory notes of Willie Lyons, all dated 30th November, 1859, each for the sum of sixteen thousand
679 six hundred and sixty-six dollars, all payable to said R. Christmas, or bearer, at the counting-house of Payne and Harrison, New Orleans, Louisiana, with eight per cent. interest, from 20th December, 1859; the first due twelve months after 20th December, 1859, and the second and third due in twenty-four and thirty-six months after said 20th December, 1859. On the first-mentioned note there *is* two credits, one of seven thousand dollars, as cash, 17th December, 1860; and five thousand three hundred and twenty-seven dollars and nineteen cents, as cash, 20th March, 1861; which notes are in part payment of amount to be ascertained due me on final settlement by said R. Christmas,

trustee for me, for land sold, rents, use of negroes, and all moneys due by him to me as trustee.

Witness my hand and seal this 26th day of August, 1862.

H. H. CHRISTMAS. [SEAL.]

(Endorsed:)

Sealed and deposited by me in post office at St. Louis, Mo., postage prepaid, this 7th day of Jan'y, 1870.

AUG. W. ALEXANDER,
U. S. Com'r for Mo. Dist.

Filed in office 17th Jan'y, 1870.

GEO. T. SWANN, *Clk.*

680 *Deposition of John D. Freeman.*

In circuit court of the U. S., so. dist. of Missi.

JNO. W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS.

John D. Freeman, a witness for Richard, Mary E., and H. H. Christmas, deposes and says:

There is a statement in the deposition of Richard Christmas, filed in this cause, that said Christmas caused to be enclosed and mailed to affiant a certain receipt, the original of Exhibit "B" filed with the said deposition of *of* said Richard Christmas in said cause. Affiant states that he rec'd a letter from said Richard, informing him that said receipt had been mailed to him. Affiant has since made diligent and daily inquiry at the post office in Jackson for said letter and said receipt, but the same has never been rec'd by affiant, and affiant requested the postmaster to make diligent search for said letter containing said receipt, which he did, as he informed affiant, but failed to find the same.

J. D. FREEMAN.

Sworn and subscribed before me this 12th day of Nov., 1869.

GEO. A. SMYTHE,
U. S. Commissioner.

Filed Nov. 15, 1869.

GEO. T. SWANN, *Clk.*

681 *Deposition of James Y. Christmas.*

UNITED STATES OF AMERICA:

In circuit court, 5th circuit and so. dist. of Missi.

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS. 86.

Interrogatories to be propounded to James Y. Christmas, a witness for def'ts H. H., M. E., and R. Christmas, the answers to which will be read on the trial of the above-entitled cause.

Int. 1st. Are you acquainted with the above-named defendants? and if

yea, state whether or not you have had any opportunity of knowing the pecuniary condition of said Richard Christmas, and as to his solvency or insolvency, in the years 1847, 1848, and 1849. If yea, state what those opportunities were, and how you came to know his pecuniary condition, and what that condition was during that period, or at any time thereafter to 1864. State what property or credits he owned or possessed, and what property he had liable to execution in 1847, 1848, and 1849, and where the same was located, and how many bales of cotton said Richard made and sold per annum, and the amount of his annual income from all sources.

682 2nd. State whether or not you lived in the family of said Richard during the years 1860, 1861, 1862, or either of them; and if yea, whether or not you attended to, or had the care and supervision of, his business correspondence during that period, or at any other time; and if yea, state whether or not you ever received or saw a letter from William Yerger, of Jackson, Mississippi, to said Richard, containing a draft of the said Richard Christmas, dated Jackson, May 25, 1860, upon Martin, Cobb & Co., N. O., for $13,000, in favor of W. Yerger and W. P. Anderson, payable on the 1st day of October next thereafter; also a letter of credit from Martin, Cobb & Co., authorising said Richard to draw on them for $15,000, between 23rd May and 1st October, 1860. If yea, produce said letter, draft, and letter of credit, or either of them; and if you cannot produce the originals nor copies, state the contents of said letter of said Yerger to said Christmas, together with its date, to what post office directed, if any, and when and where you first saw the same, and what became of the letter and draft and letter of credit.

683 3rd. State anything else you may know of value to said defendants in connexion with the subject-matter of these interrogatories.

J. D. FREEMAN,
Sol. for Def'ts.

We agree that the foregoing interrogatories and following cross-interrogatories may be answered by the witness before any commissioner of the circuit court of the U. S. without the issuance of a commission for that purpose, and that said commissioner may certify and seal the same, and enclose to the clerk of the circuit court of the U. S. at Jackson, Missi.

JOHN D. FREEMAN,
Sol. for Def'ts.
HARRIS AND WITHERS,
For Complainants.

Circuit court United States, south. dist. of Missi.

J. W. RUSSELL
vs.
WILEY LYONS ET AL.

Cross-interrogatories to witness Thomas Y. Christmas:

1st. State, if you know, what amount of debts Richard Christmas owed or was liable for in 1847, 1848, and 1849, and describe particularly the property he owned, and whether you saw the title deeds, and know whether the lands and other property were held in his own name, and

684 whether they were encumbered by judgments, deeds of trust, or mortgages, and state where they were situated.

2nd. Was Richard Christmas in the habit of managing his affairs; and if so, in what capacity did you live with him—as a dependent, as overseer, steward of his farms, or general agent; and when did you begin to act for him, and how long?

3rd. Do you know what judgments were against him in Issaquena courts, or decrees of the superior court of chancery, or in the circuit court of the United States in Mississippi, or what suits were pending against him?

4th. Was he not during the period mentioned greatly embarrassed by debt?

5th. Do you know anything of the suit by H. R. W. Hill, or Dick and Hill, against him and others, or of debts or liabilities of his to the Tennessee banks? If yea, state all you know on that subject.

6th. To whom did Richard Christmas ship his crops of cotton during these and subsequent years?

7th. If you answer to the direct interrogatories that you received or saw a letter from William Yerger enclosing a draft and letter of credit, state whether the letter was addressed to you or to Richard Christ-
685 mas, and how long has it been since you read it, if you read it at all, and what became of that letter, and how often did you read the letter, and under what circumstances.

8th. Did or not Richard Christmas apply by letter, or otherwise request said Yerger to deliver said letter of credit and draft?

9th. What is your relationship to Richard Christmas?

10th. File with your *interrogatories* the letters you have received from Richard Christmas and John D. Freeman in relation to this suit and the subject of your deposition.

HARRIS AND WITHERS.

By defendants:

1. If in answer to 3rd cross-interrogatory you speak of any judgments or decrees, the same is objected to unless exemplified copies are produced.

2. The 5th cross-interrogatory is objected to because it refers to a record not produced.

3rd. If in reply to cross-int. 1st you speak of any paper liability of said Richard Christmas, append the same, or a copy, and state whether said liabilities have since been settled, and how.

4th. State anything else necessary to explain any portion of your evidence.

J. D. FREEMAN, *for Deft's.*

686 "A."

Joseph Hough to Richard Christmas—deed.

This indenture, made this seventh day of February, in the year of our Lord one thousand eight hundred and forty-three, between Joseph Hough, of the county of Butler and State of Ohio, of the one part, and Richard Christmas, of the county of Washington, State of Mississippi, of the other part, witnesseth that the said Joseph Hough, for and in consideration of the sum of sixteen thousand dollars, to him in hand paid, at and before the sealing and delivery of these presents by the said Richard Christmas, the receipt whereof is hereby acknowledged, hath granted and bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey, and confirm, unto the said Richard Christmas, his heirs and assigns, forever, all and singular

the following-described lots, parcels, or tracts of land lying and being in the county of Bolivar, State of Mississippi, as follows, to wit: Lots No. one, two, three, and four, in section six; and lots five, six, seven, and eight, in section five; and all of fractional section No. nineteen, and the north half of section No. twenty, all in township No. twenty, in range nine west, in the district of lands offered for sale at Chocchuma, containing twelve hundred and eighty acres, more or less: To have
687 and to hold the said premises, together with the improvements, and every part and parcel thereof, to the only proper use, benefit, and behoof of him, the said Richard Christmas, his heirs and assigns, forever. And the said Joseph Hough doth further covenant and grant unto and with the said Richard Christmas that he is the true and lawful owner of said premises, and hath good right, full power, and lawful authority to sell and convey the same in manner and form aforesaid; and farther, that he, the said Joseph Hough, for himself, his heirs, executors, and administrators, will warrant and defend the said premises to the said R. Christmas, his heirs and assigns, forever, against the claims of him, them, or any of them, or any other person or persons whatsoever.

In witness*eth* whereof the said Joseph Hough hath hereunto set his hand and seal the day and year first above written.

The words "or any other person or persons whatsoever" interlined before signing.

JOSEPH HOUGH. [SEAL.]

Signed, sealed, and delivered in presence of—

THE STATE OF MISSISSIPPI, *Madison County:*

Personally appeared before me, John J. Cameron, clerk of the
688 probate court of said county, Joseph Hough, who acknowledged that he signed, sealed, and delivered the foregoing deed on the day and year, and for the purposes therein specified, as his act and deed.

Given under my hand and seal of office, at Canton, this 8th day of February, A. D. 1843.

[L. S.] JOHN J. CAMERON, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County, sct:*

I, Andrew B. Dodd, clerk of the probate court in and for said county, do certify that the foregoing deed and certificate were, on the 21st day of March, A. D. 1843, filed in my office for record. Whereupon I have made the same of record in Book "B," pages 455 and 456.

Given under my hand and private seal (there being no seal of office) this 12th day of April, 1843.

[SEAL.] A. B. DODD, *Clk.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, H. T. Florey, clerk of probate in and for said county, do hereby certify that the foregoing instrument is a true and correct copy of the deed made by Joseph Hough to Richard Christmas, as the same
689 appears of record in my office in Deed Book "B," pages 455 and 456.

Given under my hand and official seal this 20th day of October, A. D. 1869.

[L. S.] H. T. FLOREY.

This is Exhibit "A," referred to in, and filed with, and made part f

the annexed deposition of James Y. Christmas, taken this day at Louisville, Kentucky, before me, on behalf of defendants, in the case of John W. Russell and others against Willie Lyons and others, pending in chancery in the circuit court of the United States for the southern district of Mississippi, at Jackson. December 31st, 1869.

JAMES A. BEATTIE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that on this thirtieth day of December, in the year of our Lord one thousand eight hundred and sixty-nine, I, James A. Beattie, a commissioner duly appointed by the circuit court of the United States for the district of Kentucky, and commissioned as such, with power and authority to take acknowledgments of bail, affi-
690 davits, and depositions of witnesses in civil cases, and to exercise the other powers conferred on such commissioners by the acts of Congress, did call and cause to be and personally appear before me, at my office in the city of Louisville and State aforesaid, pursuant to the agreement of parties, James Y. Christmas, to testify and the truth to say on the part and behalf of the defendants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of Mississippi, at Jackson, wherein John W. Russell and others are complainants, and Willie Lyons and others are defendants, in chancery.

And the said James Y. Christmas being about the age of forty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said James Y. Christmas, and he did thereupon depose, testify, and say as follows, viz:

In answer to the interrogatories and cross-interrogatories and additional interrogatories hereunto annexed:

Interrogatories-in-chief:

1st. In answer to the first interrogatory-in-chief the witness says:

691 Answer. I am acquainted with the defendants Richard Christmas, Mary E. Christmas, and Harry H. Christmas, and have lived in the house of Richard Christmas at different times since the year 1846, sometimes for months, and sometimes for years. He is a relative of mine, and I was always in his house as one of his family, when there at all; and I assisted him in his business transactions, and, in fact, most of his business transactions were done by me while I was in his family, or upon consultation with me. In the early part of the year 1847 I went to the house of Richard Christmas, and lived there during the years 1847, 1848, and 1849. During that time I was familiar with the pecuniary condition of Richard Christmas, and continued from that time on till 1862 to be in the family of Richard Christmas from time to time, and always had access to his papers. During the years 1847, 1848, and 1849, he was not insolvent, and never was after that time up to 1862. After 1862 I have not seen much of him, and don't know his pecuniary condition since 1862. During the years 1847, 1848, and
692 1849, he owned a tract of land in Bolivar County, Mississippi, worth not less than fifty thousand dollars, on which he owed a balance of not over five thousand dollars, which I learned from Joseph Hough, to whom it was due, and from whom he purchased said land in

1843, by deed recorded in Book "B," pages 455 and 456, in the office of the probate court of Bolivar County, Mississippi. A duly certified copy of said deed, marked "A," is herewith filed, and made part of my deposition. I knew Mr. Hough. This tract of land Richard Christmas improved very much after he bought it, and was fine land in a high state of cultivation in the years 1847, 1848, and 1849. I have talked to Mr. Hough about the land. He considered that he had sold the land at a great sacrafice. It continued to improve in value until the year 1859, when Richard Christmas sold the same land to Willie Lyons for about ninety thousand dollars. During the years 1847, 1848, and 1849, Richard Christmas owned, or had on the place in Bolivar County, Mississippi, some fifty mules, a large number of stock, cattle and hogs, corn, and farming implements of every description, to carry on a
693 large plantation, amounting in all to, say, from fifteen to twenty thousand dollars' worth, and seventy or eighty negroes, and not less than from three to four hundred bales of cotton were raised annually, and also some eight to ten thousand bushels of corn. Of this property Richard Christmas owned one-half. At one time there was a mortgage on the negroes on this plantation, the amount of which mortgage I do not remember. This property and its profits was left and always was in the possession of Richard Christmas. I think it was in the year 1852 he paid off that debt in full, and relieved the negroes. In addition to this property in Bolivar County, Mississippi, Richard Christmas had in Issaquena County, in the same State, about sixty mules and some negroes of his own, in addition to those held in trust for his son Harry; also an elegant set of furniture of superior quality, sufficient to furnish a large house, worth some four or five thousand dollars; a large number of cattle, some five or six hundred head; some six fine blooded horses, and other personal property, carriages, buggies, &c., of the value, say, of fifteen thousand dollars; and an annual crop of cotton of from three to five hundred bales, worth, say, thirty dollars
694 per bale net; about ten thousand bushels of corn annually, worth fifty cents per bushel. In addition to this property he had owing to him during that time from different persons, in notes and bills of exchange, amounting to between fifty and sixty thousand dollars; and his annual income during that time was from eighteen to twenty-five thousand dollars per annum. The most of the property then owned by Richard Christmas at that time was unincumbered, or very slightly so, and during the whole of that time debts could have been made out of that property under execution; and from that time on until I lost sight of Richard Christmas' business, in 1862, he was solvent and able to pay his debts, and had property liable to execution in the State of Mississippi. In addition to this property he had other property, but I am unable to state accurately as to it. The title to the tract of land in Bolivar County, of which I have spoken, was in Richard Christmas from the time he bought it of Mr. Hough, in 1843, until he sold it to Mr. Lyons, in 1859.

2nd. In answer to the second interrogatory-in-chief the witness says:

695 Answer. I lived the most of my time with Richard Christmas during the years 1860 and 1861, and part of 1862, and during that time had free access to his desk and papers, and read many of his letters, and answered many; transacted business for him, and had charge of most of his papers, and kept them in order. During these years Richard Christmas received a letter from William Yerger, enclosing a draft for about thirteen thousand dollars, with a request, I think,

that it should be renewed. There was nothing said about any note being sent as collateral security. I recollect I was astonished at Richard Christmas being called on to give a draft for that amount at that time, because I knew that in 1859 he had sold his land in Bolivar County, Mississippi, to Willie Lyons, for about ninety thousand dollars, and his negroes on the same plantation for about ninety thousand dollars more, and had received from the two sales about seventy-five thousand dollars in cash, and I supposed that he had money in hand to meet a draft of that size. I asked him about it. He said that the draft was given as collateral to his sureties on a bond in a suit undetermined. My recollection is that Mr. Yerger said in the letter that everything
696 was going to ruin, and seemed to care little about it; but I think he asked to have the draft renewed. It was then past due. But I do not recollect the date of the draft, or its exact amount. I do not remember about any letter of credit. I cannot produce the letter or draft. They were left in the possession of Richard Christmas. I have never seen them since. I have given their contents, as well as I can recollect. I do not recollect the date of the letter, or to what post office it was addressed. I first saw it in R. Christmas' house, after it was received in 1860, 1861, or 1862. I think in the latter part of 1861 or early in 1862, but the exact time I cannot recollect.

3rd. In answer to the third interrogatory-in-chief the witness says:

Answer. I have stated all I now recollect material to either party.

Cross-interrogatories:

X 1st. In answer to the first cross-interrogatory the witness says:

Answer. I do not know the exact amount of debts Richard Christmas owed or was liable for in 1847, 1848, and 1849. I think that dur-
697 ing that time he was under liabilities, or maybe judgments, in favor of certain State banks in Mississippi, probably to the Commercial and Railroad Banks of Vicksburg; but the debts and judgments, if any, were payable, according to the laws of Mississippi, in the paper of the particular banks. Each bank was hopelessly insolvent, and it required not more than one-fifth of the nominal amount to pay such liabilities, according to law. I have given as particular description of the property he owned as I can, in my answer to the first interrogatory-in-chief above. This, most likely, does not include all the property he owned at that time; but this I recollect distinctly. I saw a title deed to the Bolivar County tract of land, containing about twelve hundred and eighty acres, and I know that the title to this tract was in Richard Christmas, and I have filed a copy of the deed, with my answer to the first interrogatory-in-chief above, as part of my deposition; and all the balance of the property I have mentioned was in his name and belonged to him, except that portion of the negroes on the plantation in Issaquena County, which he held in trust for his son. There was a mortgage on the
698 negroes in Bolivar County, which may have been afterwards foreclosed, but the negroes were never taken out of his possession, and I think it was in 1852 he lifted the debt, and held them free from incumbrance. I am not aware of any mortgage, deed of trust, or judgment against this property in Bolivar County, except, as before stated, a lien for the purchase-money of the land, not exceeding five thousand dollars, which may or may not have been paid at that time. I know this, however, there was an abundance of property during that time in Richard Christmas' name, after all incumbrances were paid, to pay a very large amount of debt, and there was no concealment of it; for it was notoriously his property, and all of said property remained in his

possession until 1859, when he sold it. During the whole of that time there was a large portion of this property unincumbered and subject to any execution that might have been brought against him.

X 2nd. In answer to the second cross-interrogatory the witness says:

Answer. Richard Christmas was in the habit of managing his own affairs. I never lived with him or acted for him in any of the
699 capacities mentioned in the question, but being unmarried and a relative, and very intimate with the family, I lived there a great deal, and had the entire confidence of Richard Christmas. He advised with me and talked with me about his business matters, and I frequently, in his absence, had entire charge of his business affairs, and probably knew as much about his business and condition, at that particular location, as he did himself.

X 3rd. In answer to the third cross-interrogatory the witness says:

Answer. There was only one or two judgments against him in Issaquena County, according to my best recollection, and they did not exceed forty-five hundred dollars. I do not know what there was in the superior court of chancery, or the United States circuit court at Jackson; nor do I recollect now what suits were pending against him, but the debts against him then did not amount to anything like the value of the property he owned.

X 4th. In answer to the fourth cross-interrogatory the witness says:

Answer. He owed a good deal at that time, but I am satisfied nothing like the amount of property he owned liable to his debts. I do not think that he was very much embarrassed.

700 X 5th. In answer to the fifth cross-interrogatory the witness says:

Answer. My opinion is, that there was a suit of H. R. W. Hill, or Dick and Hill, against him and others, and that had reference to the incumbrance on the negroes in Bolivar County, of which I have spoken; but I cannot speak with certainty about this. The claim against the negroes was satisfied. The negroes came from Madison County, Mississippi, and I think the incumbrance on the negroes of which I have spoken was in that county, but may have been transferred to Bolivar County, after the negroes were carried there. I do not know where the suit to foreclose the mortgage on these negroes was brought, but think there was a suit against Richard Christmas and Norfleet, who was a joint owner of the negroes, and the debt was satisfied by Richard Christmas in full, and the negroes became his property. As to any debts or liabilities to Tennessee banks, I do not recollect. I can't speak accurately of particular debts, as they have escaped my mind; but I have a definite recollection of his debts being less than his property.

701 X 6th. In answer to the sixth cross-interrogatory the witness says:

Answer. I do not recollect now to whom he shipped the cotton.

X 7th. In answer to the seventh cross-interrogatory the witness says:

Answer. The letter was addressed to Richard Christmas. I have not read it since about the time it was received. That was in 1860, 1861, or 1862; I think in the latter part of 1861, or early part of 1862. The letter was retained by Richard Christmas, or may have been destroyed. I have never seen it since that time. I don't recollect how often I read the letter, or whether more than once, or under what particular circumstances. The circumstance that impressed its contents on me was my surprise at Richard Christmas giving a draft for that amount at that time, as I knew he had not a great while before received in cash about seventy-five thousand dollars. I have explained this in a former answer above.

X 8th. In answer to the eighth cross-interrogatory the witness says:
Answer. I do not know.
X 9th. In answer to the ninth cross-interrogatory the witness says:
702 Answer. Richard Christmas is my second cousin.
X 10th. In answer to the tenth cross-interrogatory the witness says:
Answer. I have no such letter from either of them.

Thursday, December 30th, 1869, at 1½ o'clock p. m., adjourned the taking of this deposition until 12 o'clock, Friday, December 31st, 1869; at which time met pursuant to adjournment, and resumed the taking of this deposition.

Additional interrogatories by defendants:
1st. In answer to the first additional interrogatory the witness says:
Answer. I have no copies of judgments to file, and therefore cannot do it.
2nd. In answer to the second additional interrogatory the witness says:
Answer. I don't know anything about the record, and can't produce it.
3rd. In answer to the third additional interrogatory the witness says:
Answer. I have not in my possession any paper on which Richard Christmas was ever liable, and can't file either the original or copies thereof. I think all the debts of Richard Christmas due at that time have been settled, and I think a large portion of the debts and
703 judgments against him during the years 1847, 1848, and 1849 had been arranged by him at the time in some way, although they may or may not then or now appear of record satisfied.
4th. In answer to the fourth additional interrogatory the witness says:
Answer. I don't recollect anything else material.

JAMES Y. CHRISTMAS.

UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that on this thirty-first day of December, in the year of our Lord one thousand eight hundred and sixty-nine, I, James A. Beattie, a commissioner duly appointed by the circuit court of the United States for the district of Kentucky, and commissioned as such, with power and authority to take acknowledgments of bail, affidavits, and the depositions of witnesses in civil cases, and to exercise the other powers conferred on such commissioners by the acts of Congress, do hereby certify that the reason for taking the foregoing deposition is, that the cause is one pending in chancery, and the said deposition is taken on interrogatories.

I further certify that no notification of the time and place of
704 taking the said deposition, signed by me, was made out and served on the complainants or their attorneys, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because said deposition was taken on the interrogatories and by the agreement hereto annexed. None of the parties were present, either in person or by attorney or agent, at the taking of the said deposition.

I further certify that on the 30th and 31st days of December, A. D 1869, I was attended by the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the whole truth, and the deposition was by me reduced

to writing in the presence of the witness and from his statements; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of mailing the same with my own hand to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of said cause named in the caption.

705 In testimony whereof I have hereunto set my hand and seal this thirty-first day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and of the indepen'ce of the United States the ninety-fourth.

[L. S.] JAMES A. BEATTIE,
U. S. Commissioner Circuit Court of the U. S. for the District of Kentucky.

Fees and postage, nine $\frac{99}{100}$ dollars, paid by defendant Richard Christmas.

JAMES A. BEATTIE, *Com'r.*

This deposition sealed up by me, and deposited this day prepaid in the post office at Louisville, Kentucky, December 31st, 1869.

JAMES A. BEATTIE, *Commissioner.*

Filed Jan'y 4th, 1870, and opened by consent of counsel.

GEO. T. SWANN, *Cl'k.*

Opened by consent of counsel for both parties.

W. P. HARRIS, *for Compl't.*
J. D. FREEMAN, *for Def'ts.*

And on the hearing of this cause the following affidavit of Richard Christmas, one of the defendants herein, was introduced and read as evidence, to wit:

706 *Affidavit of Richard Christmas.*

UNITED STATES OF AMERICA:

In circuit court, 5th circuit and so. dist. of Missi.

JOHN W. RUSSELL ET ALS.
vs.
WILLIE LYONS ET ALS.

Personally appeared, before the undersigned commissioner of said court, Richard Christmas, one of the defendants in said cause, who, on oath, states that on his arrival in Jackson this day he was informed, for the first time, that the counsel for complainants had offered, as proof in this cause, two certified transcripts from the judgment roll of Issaquena County, setting forth a number of judgments against affiant and others.

Affiant states that he has examined said list of judgments on said rolls; that all of said judgments have been long since paid and discharged by affiant; that the judgments *numbered by affiant* in said rolls, Nos. 1, 2, and 3, were paid within a year or two after their rendition; that the judgments 4 and 9 are identically one and the same

judgment for identically the same amount, and of same date.
707 There was, in fact, never but one such judgment. The insertion of two such judgments in said roll is false and fraudulent, and swells the alleged indebtedness of affiant $7,753 04 more than it really was; said judgment was, in fact, paid to plaintiffs a short time after rendition. Judgment No. 5 was settled at the same time as No. 4; Nos. 6, 7, and 8 were also paid not long after rendition. Judgments No. 11 and 12, on judgment roll No. 2, are duplicates of Nos. 7 and 8 on judgment roll No. one, and falsely increase the alleged indebtedness of affiant to the aggregate amount of $4,779 63, which being added to the other duplicated judgment, $7,753 04, makes the aggregate sum of $12,532 67.

Affiant further states that he was never insolvent by reason of any or all of said judgments; that his credit with his commission merchants was not injured thereby, as he had a plenty of means and property to satisfy the same.

Affiant further states that the mortgage debt on the plantation and negroes in favor of Martin, Cobb & Co. was made in 1858; that but a small portion of the money intended to be borrowed thereby was, in fact, borrowed or received from Martin, Cobb & Co.; that in
708 1859 affiant sold said plantation to his co-defendant Willie Lyons, for about $79,998, $30,000 cash, and satisfied said mortgage with a part of the purchase-money received from said Lyons, as stated in the deposition of said Lyons. The negroes included in said mortgage were sold immediately after sale of the land to H. B. Tibbitts and wife for about $90,000 cash, and balance drafts at 12 and 24 mos., accepted by R. W. Estlin & Co., N. O., then solvent.

Affiant further states that said judgment rolls and copy of mortgage were found by affiant among the papers in this the 2nd day of Feb'y, 1870, but they are not marked filed by the clerk of this court, and affiant has had no notice of the intention of complainants to use the same as evidence. Had he been so notified, he could have taken proof to maintain the statements contained in this affidavit, and to rebut the presumption of indebtedness arising therefrom.

Affiant therefore states that he has been taken by surprise by the offer of such testimony, and if the same is allowed it will operate as a fraud on the real defendants in this cause.

If, therefore, said judgment rolls and copy of mortgage are
709 allowed as evidence, affiant prays that this affidavit may be considered with the same.

R. CHRISTMAS.

Sworn to and subscribed before me this 2nd Feb., 1870.

GEO. A. SMYTHE,
U. S. Commissioner.

Filed by def'ts Feb. 4th, 1870.

GEO. T. SWANN, *Clerk.*

And the following depositions of Jacob U. Payne and E. H. Summers, that were taken and filed and read in behalf of the complainants in the cause of H. H. Christmas, for the use of Mary E. Christmas, complainant, vs. Willie Lyons, defendant, No. 46, in chancery, in said circuit court of the United States for the 5th circuit and southern district of Mississippi, were also introduced and read to the court on the trial of this cause as evidence in behalf of the defendants therein, to wit:

In the circuit court of the United States for the southern district of Mississippi, ss:

Interrogatories to be propounded to Jacob U. Payne, George W. Huntington, William H. Dameron, Edwin H. Summers, John S. Brannin, and others, in the city of New Orleans, State of Louisiana,
710 whose answers thereto are to be read on behalf of plaintiff and usee in said above-entitled cause.

Int. 1st. State if you know anything of the parties to this suit, and which of them. State, also, if you know the firm of Payne, Huntington & Co., of New Orleans, and the firm of Summers & Brannin, of said city.

Int. 2nd. Please examine the paper writing hereto annexed, marked Exhibit "A," purporting to be a copy of a promissory note made by Willie Lyons, payable to H. H. Christmas, or order, and of endorsements thereon, and state whether or not you ever saw the original note of which said exhibit purports to be a copy? If yea, state whether or not you, or said firm of Payne, Huntington & Co., or your firm, ever had possession of said note; and if yea, for what purpose, and when and from whom received.

Int. 3rd. If you shall say that you, or said Payne, Huntington & Co., held said note as collateral security, then state when, from whom, and for what account, debt, or sum it was so held as collateral security. State particulars fully, so as to show what was such account, debt, or sum, and against whom, when due, &c., &c.

Int. 4th. If you shall say there was any such account, debt, or
711 sum, for which said note was delivered as security, then state whether or not such account, debt, or sum has been paid, in whole or in part; and if yea, how much paid, and when, by whom, for whom, and through whom. State particulars.

Int. 5th. State what was done with said note upon payment of such account, debt, or sum. If it was delivered up or sent to any person or firm, state when, by whom, to whom, why and where it was so delivered, and for what purpose; and if any receipt was made or given of the payment of such account, debt, or sum, state when and by whom it was made or given, and what was done with it.

Int. 6th. State whether or not you know of any payment made by said Lyons on said note; if yea, when, in what sums, and how, to whom, and where paid.

Int. 7th. State whether or not you or said Payne, Huntington & Co. ever received from or for said Lyons a draft drawn by J. B. Morey on Garrard and Craig, of said New Orleans, for the sum of six thousand dollars, or any other draft, with directions to collect the same and apply the proceeds, or part thereof, to the credit or payment of said note. If yea, state when, and from whom, and describe fully such draft or
712 drafts; and state how much was collected or paid thereon; and when and to whom, and what was done with the sum or sums so collected or paid; and why, by what authority, and for what reason was such disposition made of said funds.

Int. 8th. If any directions were given by said Lyons, or for him, in regard to the disposition of the proceeds of said draft of said Morey, or part thereof, state fully what were those directions; and if in writing, annex the same to your answer hereto, if you can; and if you cannot, then state why not, and annex a copy. State whether or not such directions, if any, were followed; and if not, why not; and whether or

not said Lyons was informed or notified of the manner in which the proceeds of said draft were paid or appropriated; if yea, when, how, and by whom; and state also, whether said Lyons opposed or objected to such payments or appropriations; and if yea, when and how. If such notice or objection or approval was in writing, annex the same, if you can, to your answer hereto; and, if you cannot, then state why not, and annex copies.

Int. 9th. State whether or not said Lyons was indebted to said Payne, Huntington & Co. when said draft of said Morey was so sent, received, or collected; if yea, how, in what amount, and when due; and

713 if any part of the proceeds of the draft of said Morey was paid or credited on any indebtedness of said Lyons to said Payne, Huntington & Co., state how much was so paid or credited, and on what indebtedness, and when and why; and whether or not by the directions of said Lyons; and whether or not he ever approved or sanctioned such payment or credit; and if so, when and how. If such direction, approval, or sanction was in writing, please annex the same to your answer hereto; and if you cannot, then state why not, and annex copies.

Int. 10th. If said Payne, Huntington & Co. gave or sent to said Lyons any account, or accounts, or statement showing that the proceeds of said draft of said Morey, or part thereof, had been applied or credited on any account or indebtedness of said Lyons to said Payne, Huntington & Co., state what it was, and when and where, and by and to whom, and how the same was so sent or given, and what answer or reply was given or sent by said Lyons thereto, and especially what objections, if any, were made by him. Annex to your answer hereto, if you can, any account or writing you may mention in your answer to this interrogatory; and if you cannot, then state why not, and annex copies.

714 Int. 11th. State whether or not the appropriation or payment of the proceeds of said draft of said Morey has been agreed upon, adjusted, or settled by and between said Payne, Huntington & Co. and said Lyons. If yea, when and how, and what was such appropriation or payment, and how much of said account or indebtedness, if any, of said Lyons to said Payne, Huntington & Co. has, by agreement or consent between them, been paid, adjusted, or settled by the proceeds, in whole or in part, of said draft of said Morey?

Int. 12th. If you have heard or received from said Lyons any statement of the reason why he claimed that the proceeds of said draft of said Morey should be applied or credited as a payment on said note, please state when and where it was, and give such statement fully, in your answer hereto, if you can; and if you cannot, then state the substance thereof. If such statement was in writing, please annex the same, if you can, to your answer hereto; and if you cannot, then state why not, and annex copies.

Int. 15. State whether or not said Payne, Huntington & Co. are the holders of, or interested in, said note. If yea, how? If not, when and how did they cease to be holders of, or interested in, said note?

715 Int. 14th. State whether or not at the date of any of the matters spoken of by you in any of your answers to the preceding interrogatories, said Payne, Huntington & Co. had any account or demand against said H. H. Christmas, or Harry H. Christmas, or against Kingsbury and Christmas. If yea, state what it was, and give dates and amounts, and what, if anything, is still due them; and if the same has been paid, state how much was paid, and when paid, and to whom, and by whom, through whom, and for whom, and how such payment was made.

Int. 15th. If in answer to any of the preceding interrogatories, you have spoken of the contents of any writing, and have not annexed the same to such answer, or stated the reason why you could not, and have annexed a copy thereof, please annex such writing to your answer, if you can; and if you cannot, state why not, and annex a copy.

Int. 16th. Do you know or can you state or set forth any other matter or thing that is or may be of benefit or advantage to the parties to this suit, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JOHN D. FREEMAN and
GEO. L. POTTER, *Att'ys for Pl'ff.*

716 *Exhibit "A" (to 2nd interrogatory.)*

Copy.

$8,339 90. VICKSBURG, *June* 22, 1866.

On the first December next I promise to pay to H. H. Christmas or order eight thousand three hundred and thirty-nine $\frac{90}{100}$ dollars, value received, negotiable and payable at the office of Payne, Huntington & Co., New Orleans, La.

(Signed) WILLIE LYONS.

[Stamps.]

Endorsements.

This note is given in renewal of notes secured by deed recorded in Bolivar, Book H, pages 364, 365, and the lien is retained to secure this note.

(Signed) WILLIE LYONS.

Feb'y 5, 1868. This note is entitled to a credit of four hundred and seventy-nine $\frac{61}{100}$ dollars paid us.

(Signed) PAYNE, HUNTINGTON & CO.

H. H. CHRISTMAS, USE OF MARY E. CHRISTMAS,
vs.
WILLIE LYONS. } 468.

Cross-interrogatories to Jacob U. Payne, George Huntington, William H. Dameron, Edwin H. Summers, and John S. Braunin.

1st cross-int. If you say that the note referred to in interrogatories-in-chief was ever in possession of Payne, Huntington & Co.,
717 state when and from whom they received possession of it, and how long it was in their possession, and for what purpose they received it.

2nd cross-int. Was not the note referred to, and another about the same amount made by Lyons, placed in the hands of Payne, Huntington & Co. by Richard Christmas, or by his directions, as collateral security for a debt due you by said Richard Christmas, or created with your house by some one through his agency? State how, and in what way, and for what purpose, and from whom Payne, Huntington & Co. received said notes. Have you not had a correspondence with Richard Christmas about said notes? If so, produce and file the letters written by him in reference to them; file all his letters referring to them.

X-int. 3. Who paid the money to Payne, Huntington & Co. for which said notes were deposited as collateral security, and in what way and when was that money paid? Was it paid by Mrs. Mary E. Christmas; if so, in what way was it paid—by cash, by drafts, or by proceeds of sale of cotton? If by draft, by whom, and when and where drawn? If by cotton, or other produce, when was it shipped to you, and where from, and by whom?

X-int. 4th. While said notes were held as collateral security by
718 Payne, Huntington & Co., did not Willie Lyons place in the hands of Payne, Huntington & Co. a draft drawn by J. B. Morey upon Garrard and Craig, or some one else, for a large sum, with directions to apply the same in payment of the note sued on in this case, and held by Payne, Huntington & Co. as collateral security? Was not said draft paid by said Garrard and Craig? State the amount of said draft, and when the same was paid.

5th x-int. Did you know Mrs. Mary E. Christmas at the time of her marriage and since? What separate property had she at the time of her marriage? What has she acquired since? What did it consist of, and from whom did she acquire it?

YERGERS, *Atto's for Defendant.*

It is agreed that the depositions of the parties named above may be taken upon the foregoing interrogatories and x-interrogatories by any commissioner of the U. S. without further notice or commission; all objection as to form or manner of taking the same, or as to time of taking the same, are waived; but either party reserves the right to object to competency of the witness or testimony.

719 March 23, 1868.

YERGERS, *Atto's for Lyons.*
J. D. FREEMAN,
G. L. POTTER, *for Pl'ffs.*

The depositions when taken to be read under above agreement in the case in equity, between same parties, No. 46, N. S.

March 23, 1869.

YERGERS, *Sol's for Lyons.*
J. D. FREEMAN,
G. L. POTTER, *for Pl'ffs.*

Circuit court of the U. S., fifth circuit, southern dist. of Mississippi.

H. H. CHRISTMAS, USE OF MARY E. CHRISTMAS,
vs.
WILLIE LYONS. } 468.

Jacob U. Payne's answers to interrogatories:

Ans. to 1st interrog. I am a member of the firm of Payne, Huntington & Co.; know H. H. Christmas, Willie Lyons, and the firm of Summers and Brannin.

2d ans. Payne, Huntington & Co. did hold a note similar to the one described in the copy referred to. It was pledged to them as collateral security for advances to be made for him by H. H. Christmas early in February, 1867. It was sent to Payne, Huntington & Co. by J. D. Freeman, esq.

720 3rd. In Feb'y, 1867, H. H. Christmas applied to Payne, Huntington & Co. for some advances on the pledge of his crop to be raised in connection with Kingsbury, and, as additional security, agreed

to pledge the note of Willie Lyons, then in the hands of J. D. Freeman. The advances were to be furnished as the wants of the place required until the crop was matured, which was to be shipped to them, from the proceeds of which it was expected they would be reimbursed.

4th. A part of the advances made under the agreement was paid by the shipment of a small portion of the crop; $479 61 received from Willie Lyons on account of the pledged note, as shown by the indorsement on said note; and the balance, with interest, $3,685 72, was paid by Summers and Brannin on the 20th of June, 1868, in their check, which they informed us at the time was paid by directions of Richard Christmas.

5th. At the time Summers and Brannin came to pay the balance of the debt due us by Christmas, the note was in the hands of the sheriff, advertised for sale, and under the advice of counsel, to reduce the costs, some formality of a sale was made of it for a merely nominal
721 price. The note was delivered to Summers and Brannin, as we supposed, to be returned to Gen'l Freeman. I do not know by whom it was delivered, nor what was done with it. I made no further inquiry about it.

6th. I have previously stated that Payne, Huntington & Co. endorsed a credit on the note for $479 61 received from Lyons. At the time H. H. Christmas pledged the note to Payne, Huntington & Co. he stated that it was entitled to a credit of $600, paid by Lyons for him to A Burwell, which was to be taken from the face of the note. I do not know the date.

7th. In the fall of 1867 Payne, Huntington & Co. received, through W. A. Broadwell, for account of Willie Lyons, a draft made by J. B. Morey, on Garrard and Craig, for $6,000, payable about 5th Feb'y, 1868. No directions other than stated were received with it. But as Col. Lyons had promised to provide for and pay his debt to *us* as early as he could, and directed us to pay Christmas as soon as we were in funds to do so, when the draft was collected we made up his account and placed the surplus of the draft, $479, to the credit of the Christmas debt.
722 Christmas was informed when he pledged us the note that Lyons owed us, and of the above directions by him.

8th. No directions were given about the draft other than stated above. Statements of the accounts of both Lyons and Christmas were made up and forwarded to them, showing the appropriation of all means received for their accounts. No objections were made to us to the account as rendered.

9th. Lyons was indebted to Payne, Huntington & Co., of which Christmas was informed at the time he pledged them the note, and continued so until the draft was collected, which consumed the amount received, except the $479 61 before stated.

10th. As before stated, when the draft was collected, Lyons was furnished a statement of his account showing the disposition made of it. He made no objection to us against it. It will take more time than I have to spare to make it over again.

11th. It was a long time before we saw Lyons after his account was sent him. The past winter he was here, when the matter was referred to. He admitted our account as rendered, and right to pay our-
723 selves from first means received from him under previous understanding. He said that when he gave Col. Broadwell the draft to send to us, he told him he wanted to pay the Christmas debt. He was then expecting to receive other money before the Morey draft was due, which, if obtained, would have paid us without the draft.

12th. I do not recollect to have heard anything in regard to it until he was down here the last winter, when the conversation above stated took place.

13th. Payne, Huntington & Co. had no claim on or interest in the note since their debt was paid by Summers and Brannin, 20th June, 1868.

14th. I think this is fully answered in the answers to the previous interrogatories.

15th. I can't do better than refer to the previous answers.

16th. I think I have fully answered.

Answers to cross-interrogatories:

1st. H. A. Christmas pledged the note to Payne, Huntington & Co. early in Feb'y, 1867, as security for advances to be made to Kingsbury and himself, to enable him to make a crop, which was likewise to be shipped to them. The note was then in the hands of J. D. Freeman, esq., to whom notice of the transfer was sent. It remained in his
724 hands until Payne, Huntington & Co. had it sent down to be sold to pay the balance due them by H. H. Christmas, who had agreed with Kingsbury to assume and pay the debt remaining due to Payne, Huntington & Co.

2d. H. H. Christmas owned two notes against Lyons of about the same amount, one of which he had with him. The other was in the hands of J. D. Freeman, whose receipt he held. He agreed to and made a pledge to Payne, Huntington & Co. of the note in Freeman's hands, but deposited the other note with them, to be held until Gen'l Freeman could be notified of, and recognize the transfer of, the one in his possession. The business was all with H. H. Christmas. I recollect of no correspondence with Richard Christmas until October, 1868, when Payne, Huntington & Co. received a letter from him dated 30th Sept., 1868, herewith filed, and marked "'A,' M. M. Cohen, comm'r."

3d. Summers and Brannin paid Payne, Huntington & Co. the balance due by H. H. Christmas in their check dated 20th June, 1868. We know nothing of Mary E. Christmas having any connection with or interest in the matter. The only names spoken of to us at the time of settlement were Richard Christmas and his son H. H. Christmas. Payne,
725 Huntington & Co. received no cotton or other produce after the account was rendered.

4th. Payne, Huntington & Co. received through W. A. Broadwell, a draft for $6,000 on Garrard and Craig due early in Feb'y, 1868, for account of Willie Lyons. The draft was collected at maturity and placed to Lyons' credit in his account. No instructions accompanied the draft other than stated above.

5th. I knew a Mrs. Richard Christmas a great many years ago; don't know her Christian name, and know nothing about her property, how she acquired it, if she has any, nor from whom.

J. U. PAYNE.

The above answers were reduced to writing in my office, No. 30 Camp st., in the city of New Orleans, under my direction, and were subscribed and sworn to on this the 29th day of April, 1869, before me.

[L. S.] M. M. COHEN,
United States Com'r.

Exhibit "A," referred to in the foregoing deposition of J. U. Payne, is as follows, to wit:

LOUISVILLE, KY., *Sept. 30th*, 1868.

Messrs. PAYNE, HUNTINGTON & Co.

GENT.: I have just received a letter from Honl. John D. Free-
726 man, of Jackson, Mississippi, who now has the Lyons note, payable to my son H. H. Christmas for collection, once held by you as collateral security. I am surprised to hear he pleads on oath the payment to you, while you held this note, of $6,000, for which he now claims a credit. I find in my son's account no such credit as should appear, (if Lyons' statement on oath is true,) thereby leaving you in debt to my son, while you were pursuing, I think, wrongfully my beardless boy with your snap judgment obtained under peculiar laws of your State, unknown to him at the time he gave you the note; this, and the fact, as he states, you never gave him any notice of your proceedings in court in New Orleans, together with recent disclosure by Lyons that funds were in hands to pay more than my son owed you, has stamped this transaction, as it now appears, as strange and peculiar with merchants *who* I have so long done, and, I believe, satisfactory, business. I hope to hear from you immediately, and at same time apprise J. D. Freeman, at Jackson the facts in the case, and oblige, y'rs, rep't'ly,

R. CHRISTMAS.

(Endorsed:) Sept. 30th, 1868. R. Christmas. Rec'd 6th Oct. Ans'd 16. "A." M. M. Cohen, com'r.

727 Circuit court of the U. S. fifth circuit, southern dist. of Mississippi.

H. H. CHRISTMAS, USE OF MARY E. CHRISTMAS,
vs.
WILLIE LYONS. } No. 468.

E. H. Summers' answers to interrogatories:

1. I know all the parties mentioned in this interrogatory; am a member of the firm of Summers and Brannin.

2. I think I have seen the original note, of which this purports to be a copy. Summers and Brannin received said note from Payne, Huntington & Co. It was held by them as collateral security for an account they had against H. H. Christmas, amounting to $3,998 55, (this amount included costs of suit.) We paid this account of Payne, Huntington & Co., by virtue of a telegram of 19 June, 1868, from Brannin, Summers & Co., duplicate of which I file herewith, marked "'A,' M. M. Cohen, com'r." On the day of the receipt of the aforesaid telegram the note aforesaid was advertised to be sold by Payne, Huntington & Co., to satisfy the debt aforesaid. When we paid the account, costs, &c., as above, and took up the note as aforesaid, we enclosed same to our house, at
728 Louisville, (Brannin, Summers & Co.)

3. Answered by answer to 2d interrogatory.

4. Answered by answer to 2d interrogatory.

5. The account of Payne, Huntington & Co. vs. Christmas receipted, together with the Willie Lyons note, were sent, as above stated, to Brannin, Summers & Co., Louisville.

6. I know nothing about this.

7. I know nothing about this; had no further connection with, or knowledge of, this transaction than contained in my answer to 2d interrogatory.

8. I know nothing about this.
9. I know nothing about this.
10. I know nothing of this.
11. I know nothing of this.
13. I have explained all I know about this in my answer to 2d interrogatory.
14. My answer to interrogatory 2d fully explains and answers this.
15. I have referred to no writing outside of the telegram herewith filed, except the account of Payne, Huntington & Co. vs. Kingsbury and Christmas, and the note of Willie Lyons, both of which were sent to Brannin, Summers & Co., at Louisville.
16. I know nothing further.

729 Answers to cross-interrogatories:

1. I know nothing about this further than what Mr. Payne told me; don't know how long it was in possession of Payne, Huntington & Co. Payne told me he held it as collateral security as aforesaid.
2. I know nothing about this. I remember the house of Hilliard, Summers & Co., in 1866, received Willie Lyons' draft on Payne, Huntington & Co., but I do not now remember the nature of the transaction. I have examined the books of Hilliard, Summers & Co., and do not find that either R. Christmas or H. H. Christmas ever had any account with that firm.

E. H. SUMMERS.

The above answers were reduced to writing in my office, No. 30 Camp st., in the city of New Orleans, under my direction, and were duly subscribed and sworn to before me on this the 29th day of April, in the year of our Lord one thousand eight hundred and sixty-nine.

[L. S.] M. M. COHEN,
U. S. Commissioner.

Exhibit "A," referred to in the foregoing deposition of E. H. Summers, is as follows, to wit:

Dated Louisville, 19, 1868. Received at New Orleans, June 19th, 1868:

730 To Summers and Brannin: Pay immediately Payne, Huntington & Co. account against Kingsbury and Christmas, thirty-five hundred ninety-nine dollars fifty-four cents, (3,599 54,) as cash, third (3) March, and costs suit, and take up Willie Lyons' note advertised for sale to-morrow, payable to H. H. Christmas. 8.45.

BRANNIN, SUMMERS & CO.

(Endorsed:) "A." M. M. COHEN, *Com'r.*

Circuit court of the U. S., fifth circuit, southern dist. of Mississippi.

H. H. CHRISTMAS, USE OF MARY E. CHRISTMAS,
vs.
WILLIE LYONS. } 468.

I certify that the depositions of Geo. W. Huntington and William H. Dameron were not taken, because it was suggested that it would be useless to take their depositions, as they would only corroborate that of Jacob W. Payne, and that the deposition of John S. Brannin was not

taken on the like suggestion that it would only corroborate the testimony of E. H. Summers.

[L. S.] M. M. COHEN,
U. S. Commissioner.

NEW ORLEANS, LA., *7th May*, 1869.

Sealed up, directed, and mailed by me.

M. M. COHEN,
U. S. Com'r.

Comm'r's fees, $20 36.

731 Filed May 10th, 1869.

GEO. T. SWANN, *Clk.*

Opened by me May 12, '69.

GEO. T. SWANN, *Clk.*

And the following depositions of Worden P. Hahn, Richard Christmas, Charles Tilden, A. O. Brannin, W'm S. Bodley, and W'm Brown, that were taken and read as evidence on behalf of complainants in the case of Richard Christmas and wife et al. vs. Willie Lyons, No. 46, in chancery in said circuit court for the fifth circuit and southern district of Mississippi, were also introduced and read as evidence on behalf of the defendants on the final hearing of this cause in said court, to wit:

UNITED STATES OF AMERICA:

In the circuit court of the United States for the fifth circuit and southern district of the State Mississippi.

H. H. CHRISTMAS, USE, &C., *vs.* WILLIE LYONS. } 468.—Action at law.

H. H. CHRISTMAS, USE, &C., *vs.* WILLIE LYONS. } N. S., 46.—In chancery.

732 It is hereby agreed that the depositions of the witnesses named in the caption of the interrogatories hereto attached, or such of them as may be found, or others that may be produced before the commissioner, may be taken before James A. Beattie, U. S. commissioner, without any special commission or order of court, and that said depositions when taken may be read as evidence in both of the above-entitled causes.

But it is understood that either may object, and does not waive the right to object to the reading of the evidence, or any part of it, to the jury or court as evidence, on account of competency of evidence or witness; this agreement being only intended to waive all forms and notice of taking the deposition, and I waive putting x-interrogatories.

W. YERGER, *Atto. for Lyons.*

Should the depositions not be received and filed till after the expiration of three months from time the suit in equity is at issue, that point is waived, and they may be read under the above agreement, if taken and filed at any time before trial.

W. YERGER, *for Lyons.*

UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth circuit and southern district of the State of Mississippi.

733

RICHARD CHRISTMAS, AND MARY E. CHRISTmas, his wife, and H. H. Christmas, et als., *vs.* WILLIE LYONS. } N. S., 46.—In chancery.

Interrogatories to be propounded to A. O. Brannin, W. P. Hahn, W. S. Bodley, John G. Simrall, Charles Tilden, Richard Christmas, and H. H. Christmas, and others, the answers to which will be read in evidence in behalf of complainants on the trial of the above-entitled cause.

Int. 1st. Are you acquainted with the parties to this suit? If yea, state what parties you know, and what relationship exists between the parties complainant.

Int. 2d. Look at the promissory note and protest hereto attached, and marked Exhibit "A," to interrogatories, and state if you know who is the holder and beneficial owner of the same.

Int. 3rd. Look at the paper hereto attached, marked Exhibit "B," to interrogatories, dated May 1st, 1868, and signed "Harry H. Christmas," and state if you know who executed the same. Are you acquainted with the handwriting or signature of Harry H. Christmas? If
734 yea, state how you know the same, and in whose handwriting is said signature of Harry H. Christmas attached to said Exhibit "B"? Where is said Harry H. Christmas?

Int. 4th. Look at the contents of said Exhibit "B," and state if you know the note mentioned in and intended to be described thereby. If yea, state how you know; state, also, what note it was, and give a particular description of the same, stating date, amount, by whom made, to whom payable, and when and where payable, and where said note is now, and where said note was at the date of said Exhibit "B."

Int. 5th. State whether or not you know of any writing or writings made with the intent or purpose of transferring or assigning to Mary E. Christmas the said note, Exhibit "A," to these interrogatories? If yea, state who executed the same, and annex said writing to your answer hereto, if you can; if you cannot, state why not, and annex a copy or copies, as the fact may be. State, also, how you know such was the intent or purpose of the said party in so executing said writing or writings, and the consideration of the same.

Int. 6th. State whether or not said account mentioned in said Exhibit "B," as due from said Harry H. Christmas to said Payne, Hunting-
735 ton & Co. has been paid; if yea, by whom and how, and with whose funds, and when and to whom, and what amount was paid. If you have any written evidence of such payment, annex the same to your answer hereto if you can; and if you cannot, state why, and annex a copy. If you ever had possession of such evidence, state when, where, and from whom you received the same, and to whom you delivered the same, if to any one.

Int. 7th. If you ever had possession of said note, Exhibit "A," after May 1st, 1868, state when, where, from whom, and for whom you received it, and what disposition you made of the same?

Int. 8th. State whether or not you know of the raising of any money by or for said Mary E. Christmas to pay said account spoken of in Exhibit "B," or to purchase said note, "Exhibit "A," or for investment in

New Orleans. If yea, when, where, and how, and for whom was said money raised, and how much, and what was done with the same, and by whom? If said money was paid to, or deposited with, any firm or person, state when, where, by whom, with whom, and on whose behalf the same was so paid or deposited, and for what purpose, and what was thereupon done, if anything, in reference to the payment of said account,
and obtaining possession of said note, Exhibit "A." If you say
736 any money was so raised, directly or indirectly, by any conveyance of any real estate of said Mary E. Christmas, then annex to your answer hereto an authenticated copy of such conveyance, and also an authenticated copy of the deed to her for such real estate. State fully all the particulars in reference to this interrogatory.

Int. 9th. (To Richard Christmas alone.) If, in answer to any of the foregoing interrogatories, you have said you have done any act in relation to the payment of said account, or the obtaining of said note, or raising money for that purpose, please state for whom you acted, and whether for yourself or as attorney, agent, or trustee for another.

Int. 10th. (To all the witnesses.) Can you state any other matter or thing that is or may be of any benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JOHN D. FREEMAN,
G. L. POTTER,
Sol's for Compl'ts.

737 Exhibit "A," referred to in the foregoing interrogatories, is as follows, to wit:

ROBERT J. KERR, [Rev. stamp.]
Notary Public, State of Louisiana.

By this public instrument of protest, be it known that on this fourth day of December, in the year one thousand eight hundred and sixty-six, at the request of H. H. Christmas, esquire, holder of the original note, whereof a true copy is on the reverse hereof written, I, Robert Joseph Kerr, a notary public dwelling in the city of New Orleans, duly commissioned, presented said note to Messrs. Payne, Huntington & Co., at *there* office in this city, where the same is made payable, and demanded payment of the same, and was answered that the drawer had provided no funds to pay said note, and that they would not pay said note. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said note. Thus
738 done and protested in the presence of Messrs. Alcie J. Kerr and Anatole A. Kerr, both of this city, witnesses.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[L. S.] ROBERT J. KERR,
Notary Public.

$8,339 90. VICKSBURG, *June 22nd*, 1866.

On the first December next, I promise to pay H. H. Christmas, or order, eight thousand three hundred and thirty-nine $\frac{90}{100}$, value received,

negotiable and payable at the office of Payne, Huntington & Co., New Orleans, La.

(Signed) WILLIE LYONS.

(Endorsed:) This note is given in renewal of notes secured by deed recorded in Bolivar, Book "H," pages 364, 365, and the lien is retained to secure this note.

(Signed) WILLIE LYONS.
H. H. CHRISTMAS.

(Endorsed:) December 4th, 1866. Willie Lyons' note payable at the office of Payne, Huntington & Co. Amount, $8,339 90; fees, $3 50; int. rev. stamp, 28—$8,343 68. H. H. Christmas. Robert J. Kerr, notary public. Exhibit A to interrogatories.

Filed Nov. 2nd, 1868.

G. T. SWANN, *Clk.*

739 *Exhibit "B" to interrogatories.*

Mary E. Christmas having this day obligated herself to me to pay Payne, Huntington & Co., of New Orleans, my account due them for supplies, amounting to about three thousand five hundred dollars, now due, in consideration of which I hereby transfer in full, to said Mary E. Christmas, a note of Willie Lyons, of Mississippi, payable to me for about eight thousand eight hundred dollars, payable at the counting-house of Payne, Huntington & Co., New Orleans, and dated at Vicksburg, Mississippi, about 22 June, 1866. Said note is held by Payne, Huntington & Co. as collateral security for paying my account due them, and is now sued on by them in U. States court at Jackson, Mississippi.

May 1st, 1868.

HARRY H. CHRISTMAS.

UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that on this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and other days named below, I, James A. Beattie, a commissioner duly appointed by the circuit court of the United States for the district of Ken-
740 tucky, and commissioned as such, with power and authority to take acknowledgments of bail, affidavits, and the depositions of witnesses in civil cases, and to exercise the other powers conferred on such commissioners by the acts of Congress, did, in pursuance of the agreement hereto annexed, call and cause to be and personally be and appear before me, at my office, in the city of Louisville and State aforesaid, Worden P. Hahn, Richard Christmas, Charles Tilden, A. O. Brannin, Wm. S. Bodley, and William Brown, to testify and the truth to say on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the fifth circuit and southern district of Mississippi, wherein Richard Christmas, and Mary E. Christmas, his wife, and H. H. Christmas, et als., are complainants, and Willie Lyons is respondent, No. 46, in chancery.

And the said Worden P. Hahn being about the age of fifty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said Worden P. Hahn,

and he did thereupon depose, testify, and say as follows, viz, in
741 answer to the interrogatories hereto annexed:

1st. In answer to the first interrogatory the witness says:

Ans. I know the complainants, but not the defendant. Richard Christmas and Mary E. Christmas are husband and wife; and Harry H. Christmas is the son of Richard Christmas.

2nd. In answer to the second interrogatory the witness says:

Ans. I have examined the exhibit referred to. I don't know who is the beneficial owner of said note.

3rd. In answer to the third interrogatory the witness says:

Ans. I have examined the exhibit referred to, and know nothing about the matters of this interrogatory.

4th. To the fourth interrogatory the witness answering says:

Ans. I know nothing about the matters inquired about in this interrogatory.

5th. In answer to the fifth interrogatory the witness says:

Ans. I know nothing about the matters of this interrogatory.

6th. In answer to the sixth interrogatory the witness says:

742 Ans. I don't know, and have no evidence of any such payment in my possession.

7th. In answer to the seventh interrogatory the witness says:

Ans. I never had it at any time.

8th. In answer to the 8th interrogatory the witness says:

Ans. On or about the 16th day of June, 1868, Richard Christmas came to me and Alfred Harris, and offered to sell us a part of his wife's land, adjoining ours, in this (Jefferson) county, Kentucky. He said it was important to raise about $4,000 00, to be used in New Orleans on the 20th day of June, 1868, in a very important business transaction, and offered the land to us at what he said was a bargain, because he said he was compelled to raise the money by that day. We considered the proposition made us, and on the morning of the 19th of June, 1868, Richard Christmas came to us and told us that he had arranged with Brannin and Summers, of Louisville, to telegraph that day the house of Summers and Brannin, in New Orleans, to advance the money needed there on the 20th of June, 1868, by the said Christmas, provided he would furnish the house of Brannin and Summers here with *with*
743 the money on that day; and he said that unless we closed up the trade and bought the land on that day, he would not sell it to us at any price, as he could make no use of the money after the 20th of June, 1868. We told him we did not have the money, but if he would take a four months' draft, payable in Jeffersonville, Indiana, accepted by us, we would take the land at $4,250 00, we paying enough in money to make it equal to cash. He accepted the proposition, and the trade was closed. He, as trustee for his wife, Mary E. Christmas, executed, or rather tendered to us, the form of deeds for the land; and there being some difficulty about the description and metes and bounds of the land, we declined to accept the deeds as drawn. By this time banking hours were drawing to a close, and Christmas said unless he could get the draft discounted on that day it would be of no use to him, and there was not enough time left to correct the deeds, so he gave us his written obligation, as trustee for his wife, to convey to us the said land within a reasonable time thereafter; and we gave him the said draft at four months', accepted by us for $4,000 00, payable to his order, as
744 trustee for his wife. I paid him, in addition, $250 00, my share amounting to more than Harris'. I then went with the said

Christmas to the Bank of Louisville, and saw the draft discounted by Charles Tilden, the cashier of said bank, I paying the discount for Harris and myself; and Christmas, being in a great hurry, had a check then drawn up by a clerk in the bank for the nett proceeds of the draft, and he then signed it as trustee, and made me take him in my buggy to the office of Brannin and Summers. He then gave the said check which had been drawn for him to A. O. Brannin, of the said firm of Brannin and Summers, together with enough money to make $4,000 00, and while we were there Mr. Brannin wrote out a despatch to Summers and Brannin, of New Orleans, to pay the said account and take up the said note. Up to this time I did not know for what the money was intended. Shortly thereafter the said Christmas, as trustee for his wife, Mary E. Christmas, conveyed the said land to me and the wife of the said Harris, in pursuance of said agreement. The said land which we bought had been *divided* to the said Mary E. Christmas many years before her marriage with Richard Christmas, and by two deeds between
745 them and James Y. Christmas, dated the day of , 185 , the said land had been settled upon her by conveying the same to said Richard Christmas as trustee for her sole, separate, and exclusive use, with power to sell, or authorize a sale of the same, and the proceeds to be held in the same way, and upon the like trusts. Correct copies of said deeds, and the will under which she originally acquired the said land, will be filed herein with the deposition of Richard Christmas. The deeds he made to us were made under a power of attorney from his said wife, authorizing him to sell said land. Duly certified copies of said power of attorney, and the deeds to myself and Mrs. Harris, will be filed with the deposition of Richard Christmas, marked Exhibits

9th. In answer to the ninth interrogatory the witness says:

Ans. I have stated all I know on the subject.

10th. In answer to the tenth interrogatory the witness says:

Ans. I have stated all I recollect material to either party.

W. P. HAHN.

And the said Richard Christmas being about the age of fifty
746 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said Richard Christmas, and he did thereupon depose, testify, and say as follows, in answer to the interrogatories hereto annexed, to wit:

1st. In answer to the first interrogatory the witness says:

Ans. I know all the parties to the suit. Mrs. Mary E. Christmas is my wife, and H. H. Christmas is my son by my first wife. There is no blood-relationship between Mary E. Christmas and H. H. Christmas.

2nd. In answer to the second interrogatory the witness says:

Ans. The note annexed to the interrogatories marked Exhibit "A" belongs to the said Mary E. Christmas as complainant therein, and she is the beneficial owner thereof. I am trustee for her, and hold it for her.

3rd. In answer to the third interrogatory the witness says:

Ans. The paper attached to the interrogatories, marked Exhibit "B," dated May 1st, 1868, and signed Harry H. Christmas, was ex-
747 ecuted by the said Harry H. Christmas. I know his signature and handwriting. I have seen him write thousands of times, and was with him when he executed this transfer, and saw him sign it. The

signature is in his handwriting. He is now either in Alaska, or on his way to San Francisco from Alaska.

4th. In answer to the fourth interrogatory the witness says:

Ans. I have examined Exhibit "B," and know the note mentioned and assigned therein. I had seen the note repeatedly before that time, and knew the handwriting of Willie Lyons. The note described, and intended to be assigned in said Exhibit "B," was dated Vicksburg, June 22d, 1866, and was for the sum of eight thousand three hundred and thirty-nine $\frac{90}{100}$ dollars, and was signed and executed by said Willie Lyons, the defendant herein, to the said H. H. Christmas, and payable to him or his order on the first of December, 1866, at the office of Payne, Huntington & Co., New Orleans, La. The said note, with the protest thereof, is annexed to the interrogatories herewith, marked Exhibit "A." At the time of the transfer of said note to Mrs. Mary E. Christmas, it was in the hands of John D. Freeman, esq., of Jackson, Mississippi.

The description of the note in the transfer was made from recol-
748 lection, not having the exact amount of the note at the time.

5th. In answer to the fifth interrogatory the witness says:

Ans. I do know of a writing made with the intent of assigning the said note to the said Mary E. Christmas. The writing annexed to the interrogatories, marked Exhibit "B," was executed by the said Harry H. Christmas, for the purpose of transferring the said note to the said Mary E. Christmas. I was present when the said writing was executed and transfer made. The said Harry H. Christmas was indebted to Payne, Huntington & Co., of New Orleans, in about the sum of three thousand five hundred dollars for supplies, and was anxious to go to San Francisco to settle, and had not the means to settle this account, and did not want to stay to look after it, and assigned this note to Mrs. Mary E. Christmas, in consideration of her agreeing to pay and take up said account. He had some idea of leaving the country, and did afterwards go to Alaska, as I have before stated. I annex hereto a copy of said transfer as part of my answer to this question. The original is annexed to these interrogatories.

6th. In answer to the sixth interrogatory the witness says:

749 Ans. The account mentioned in Exhibit "B," due to Payne, Huntington & Co., has been paid, and was paid in the following way: Before the transfer of said note to Mary E. Christmas, Harry H. Christmas had hypothecated the said note to said Payne, Huntington & Co., of New Orleans, to secure the payment of any account which might be made with them by the said Harry H. Christmas, for plantation supplies, and the said note had been withdrawn by them from suit in Jackson, Mississippi, or from the hands of John D. Freeman, esqr., and about the 15th of June, 1868, or maybe a day or two later, I saw by an advertisement, enclosed to me by a friend in New Orleans, that the said note was advertised for sale on the 20th of June, 1868, in New Orleans, to pay the said account of Payne, Huntington & Co. I had surrendered everything I had in bankruptcy not long before, and I had not enough means in money of my wife's, as her trustee, and she was in Europe; and it became necessary for me as her trustee, in order to save said note, and to comply with her obligation to pay said account, to sell a part of her real estate, situated in this (Jefferson) county, Kentucky,

and finally did at quite a sacrifice, and after much difficulty. The
750 land I sold had been originally devised to said Mary E. Christmas, then Mary E. Phillips, by her grandfather, Thomas Phillips, long before our marriage; and in pursuance of our marriage contract, this land, with other land and property, by conveyances made about

fourteen years ago, by myself and my said wife to James Y. Christmas, and from James Y. Christmas to me, was conveyed to me in trust for the sole, separate, and exclusive use of the said Mary E. Christmas, with power to her to sell, or authorize the sale thereof, and the proceeds to be held in the same way. Under power of attorney from her, executed before she left for Europe, I sold a part of this land to Worden P. Hahn, and part to Alfred Harris, on the 19th day of June, 1868, for $4,250 00. Having to get the money ready to buy the aforesaid note in for my wife, in New Orleans, on the next day, and being pressed for time, and the first deeds I had drawn not being satisfactory, I gave them on that day a writing, as trustee for my said wife, obligating myself to convey them the said land at a subsequent day, according to the terms of sale. And thereupon they, the said Harris and Hahn, gave me, as trustee for my wife, a draft, payable at the First National Bank of Jeffersonville,
751 Indiana, for the purchase-money, amounting to $4,000 00, payable in four months, and said Hahn paid the $250 00 in money. This draft I immediately carried to the Bank of Louisville, and had it discounted, said Hahn paying the discount; and for the nett proceeds of said draft, Mr. Tilden, the cashier or president, ordered one of the clerks of said bank to fill up a check, payable to bill or bearer, which I signed, as trustee for my wife, in the presence of said Tilden and Hahn. This check, which was for $3,872 00, on the Bank of Louisville, was for the money realized by the discount of the aforesaid draft of Hahn and Harris, given by them for said land. This check I, in company with said Worden P. Hahn, carried at once to Brannin and Summers, in Louisville, Kentucky, who had previously arranged with me that, if I would put them in funds here, they would telegraph to the house of Summers and Brannin, in New Orleans, to pay the aforesaid account due Payne, Huntington & Co. from H. H. Christmas, and to take up said note for Mrs. Christmas, or buy it at the sale on the 20th of June, 1868. Accordingly I gave said Brannin and Summers the said check for the proceeds of the sale of my wife's land, together with enough money
752 to make $4,000 00, and they immediately telegraphed said Summers and Brannin, in New Orleans, to pay said account, and buy in said note, in pursuance of the foregoing arrangement, both of which they did. The whole amount of the account of Payne, Huntington & Co., in addition to some expenses incident to the proceedings and sale of said note, was then paid by Summers and Brannin, out of the proceeds of the sale of my wife's separate real estate, to Payne, Huntington & Co. The exact amount of that account I do not know. I saw the account after that time receipted in full by Payne, Huntington & Co. It was sent to me by Summers and Brannin, through their house of Brannin and Summers here. I then enclosed it to John D. Freeman, esq., my wife's attorney, at Jackson, Mississippi. The amount received by Payne, Huntington & Co. for their debt and interest, from Summers and Brannin, was $3,685 73. In addition to this, there was paid expenses of the suit and sale to the amount $215 30, as per account herewith filed, marked (X), as part hereof. I have no copy of the said receipt of Payne, Huntington & Co., for their debt and interest, in my possession.

7th. In answer to the seventh interrogatory the witness says:
753 Ans. Shortly after the said note marked Exhibit "A" was taken up, as before mentioned, I think about the 10th of July, 1868, I received it from Brannin and Summers, of this place, for my wife's benefit, and shortly thereafter I sent it to John D. Freeman, esqr., her attorney, at Jackson, Mississippi.

8th. In answer to the eighth interrogatory the witness says:

Ans. Yes, I know of money being raised for Mrs. Mary E. Christmas to pay said account spoken of in Exhibit "B," and to buy the note referred to as Exhibit "A." It was done on the 19th day of June, 1868, at Louisville, Kentucky, by sale of my wife's separate real estate, and for her benefit. The amount of the proceeds of such sale was $4,250 00, and its nett proceeds were applied by Summers and Brannin, as heretofore stated, to pay the account of Payne, Huntington & Co., and take up the said note. The particulars of the transaction are set out in my answer to the sixth interrogatory above. $3,872 of the said money, after the said four months' draft was discounted as aforesaid, was left on deposit in the Bank of Louisville on the said 19th of June, 1868, by me as trustee for my wife, and a check for the nett proceeds, payable as
754 aforesaid to bill or bearer, given by me as such trustee, together with enough money to make $4,000 00, to Brannin and Summers to induce them to telegraph Summers and Brannins, of New Orleans, to pay said account, and take up said note; and upon said proceeds and check and money said account was paid, and said note taken up, as before stated. The said money was raised by the sale of the real estate of the said Mary E. Christmas, which was held by me as trustee for her sole and separate use, under a deed from myself and wife to James Y. Christmas, and one from him to me, duly recorded in the clerk's office of the Jefferson County court, Kentucky. I annex hereto, as part of my answer, duly authenticated, copies of said conveyances, marked C and D respectively; also duly certified copies of the deeds made by me as trustee of my wife to Worden P. Hahn and Mrs. Glorvina E. Harris, wife of the said Alfred Harris, as aforesaid, to raise the money to pay said account, and take up said note. These last-named conveyances are made part of my answer, marked (E) and (F) respectively. I also file, as part of my deposition, a duly authenticated copy, marked (G,)
755 of the will of Thomas Phillips, deceased, my wife's grandfather; also deed of partition from Thomas Phillips' heirs to my wife, marked (H;) also power of attorney from my wife, marked (I,) to me.

9th. In answer to the ninth interrogatory the witness says:

Ans. In selling said property and procuring said account to be paid, and the note taken up, and in all I did concerning it, I acted as trustee and agent for my wife, Mary E. Christmas.

10th. In answer to the tenth interrogatory the witness says:

Ans. I do not recollect anything else material to either party to this action.

R. CHRISTMAS.

March 29th, 1869, 4 o'clock p. m., continued the taking of these depositions until Thursday, April 1st, 1869, at 2 o'clock, at which hour and day the same was resumed.

And the said Charles Tilden being about the age of fifty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did thereupon carefully examine the said Charles
756 Tilden, and he did thereupon depose, testify, and say as follows, in answer to the interrogatories hereto annexed, to wit:

1st. In answer to the first interrogatory the witness says:

Ans. I know the complainants. Mary E. Christmas is the wife of Richard Christmas, and Harry H. Christmas is his son. I do not know Mr. Lyons.

2nd. In answer to the second interrogatory the witness says:
Ans. I don't know.
3rd. In answer to the third interrogatory the witness says:
Ans. I don't know.
4th. In answer to the fourth interrogatory the witness says:
Ans. I don't know.
5th. In answer to the fifth interrogatory the witness says:
Ans. I don't know.
6th. In answer to the sixth interrogatory the witness says:
Ans. I don't know.
7th. In answer to the seventh interrogatory the witness says:
Ans. I don't know.

757 8th. In answer to the eighth interrogatory the witness says:
Ans. About the 16th of June, 1868, Richard Christmas brought me an advertisement of the sale of the note referred to herein, to take place in New Orleans on the 20th of June, 1868, to pay the account due to Payne, Huntington & Co., and advised with me as to raising the money, for his wife's benefit, to pay said account, and buy said note. I told him I had no money to spare. He wanted to borrow on the faith of his wife's land. Some time afterwards he came to me to know if he would take a draft of Harris and Hahn in payment for some of his wife's land, which he was about to sell them, if the Bank of Louisville, of which I was then president, would discount it. I told him we would. About noon of the 19th of June, 1868, the said Christmas, in company with Worden P. Hahn, brought me the draft of Harris and Hahn for $4,000 00, at four months, payable to the order of Richard Christmas, as trustee for his wife, Mary E. Christmas, in Jeffersonville, Indiana, which they said was for land of Mrs. Mary E. Christmas, which had just been sold to Harris and Hahn. I discounted the draft, and the money was

758 deposited in the Bank of Louisville to the credit of said Christmas, as trustee for his wife, and at the instance of said Christmas one of the clerks in the bank drew up immediately for him a check for the nett proceeds of said draft, payable to bill or bearer, which he then signed as trustee for his wife, and on the following day the said money was drawn upon this check by Messrs. Brannin and Summers, of Louisville.

9th. In answer to the ninth interrogatory the witness says:
Ans. I don't know.
10th. In answer to the tenth interrogatory the witness says:
Ans. I think that I have stated all I know material to either party.

CHA'S TILDEN.

And the said A. O. Brannin being about the age of fifty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said A. O. Brannin, and he did thereupon depose, testify, and say as follows, in answer to the interrogatories hereto annexed, to wit:

1st. In answer to the first interrogatory the witness says:
Ans. I know Richard Christmas, Mary E. Christmas, and H.

759 H. Christmas. Richard Christmas and Mary E. Christmas are husband and wife. Harry H. Christmas is a son of Richard Christmas. I also know the defendant Willie Lyons.

2nd. In answer to the second interrogatory the witness says:
Ans. The note annexed to the interrogatories, marked Exhibit "A,"

was bought on the 20th day of June, 1868, or thereabouts, by Summers and Brannin, of New Orleans, for Richard Christmas, as trustee for his wife, Mary E. Christmas, and, so far as I know, is still held for her benefit.

3rd. In answer to the third interrogatory the witness says:

Ans. I know nothing of the matters in the third interrogatory.

4th. In answer to the fourth interrogatory the witness says:

Ans. I know nothing of the matters in the fourth interrogatory.

5th. In answer to the fifth interrogatory the witness says:

Ans. I know nothing of the matters in the fifth interrogatory.

6th. In answer to the sixth interrogatory the witness says:

Ans. The account referred to is not before me, and I cannot
760 tell whether said account is the one referred to in said Exhibit "B" or not. An account due from Harry H. Christmas to Payne, Huntington & Co. has been paid, and was paid by Summers and Brannin, of New Orleans, on the 20th of June, 1868, or thereabouts, upon an order from Brannin and Summers, of Louisville, to do so. I am a member of both of said last-named firms. On the morning of the 19th of June, 1868, Richard Christmas called at our store in Louisville, and told us that the said note was to be sold in New Orleans, on the next day, to pay an account due from Harry H. Christmas to Payne, Huntington & Co., and inquired of us, if he would put us in funds on that day, if we would arrange by telegraph with Summers and Brannin, in New Orleans, to pay off the account and buy said note. We told him we would. About three o'clock that day the said Christmas brought me a check drawn by him as trustee for his wife, Mary E. Christmas, on the Bank of Louisville, payable to bill or bearer, for $3,872 00, and paid me an additional sum in money sufficient to make up $4,000 00,
which he said was the proceeds of the sale of his wife's land just
761 made. Said check was paid to us by the said bank on presentation. Upon this we telegraphed to the firm of Summers and Brannin, New Orleans, on the evening of the 19th of June, 1868, to pay the account of H. H. Christmas to Payne, Huntington & Co., and take up the note; and in pursuance of this telegram, the said Summers and Brannin bought the note, and paid the account of said H. H. Christmas, to said Payne, Huntington & Co., on the next day, the 20th of June, 1868, or thereabouts. When the said Christmas called on us, on the 19th of June, 1868, he showed me the advertisement of the sale of the said note, to be made on the next day. The amount that was paid on the account due Payne, Huntington & Co. was $3,685 73, which appeared from their bill receipted in full, which was sent us from New Orleans by Summers and Brannin, and handed by us to Richard Christmas.

7th. In answer to the seventh interrogatory the witness says:

Ans. The firm of Brannin and Summers, in Louisville, had possession of said note in the early part of July, 1868. After it was taken up in the manner above stated, it was sent to us by Summers and Brannin,
and we handed it to Richard Christmas.

762 8th. In answer to the eighth interrogatory the witness says:

Ans. At the time Richard Christmas gave us the check and money aforesaid to pay said account, he told me he had raised it by selling his wife's land, and the proceeds were applied, as I have before stated, to taking up the said note, and the check aforesaid drawn by said Christmas as trustee for his wife, and enough money to make $4,000 00 were deposited with us, to be applied through Summers and Brannin, in New Orleans, to take up said note, which was done. As to any con-

veyance of real estate to raise said money, I only know from what was told me.

9th. In answer to the ninth interrogatory the witness says:

Ans. I know nothing as to this.

10th. In answer to the tenth interrogatory the witness says:

Ans. I think I have stated all I know material to either party.

A. O. BRANNIN.

Thursday, April 1st, 1869, 4 o'clock p. m., continued the taking of these depositions until Friday, April 2, 1869, at 3 o'clock p. m., at which time resumed the taking of the same.

And the said William S. Bodley being about the age of sixty-two years, and having been by me first cautioned and sworn to testify
763 the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said William S. Bodley, and he did thereupon depose, testify, and say as follows, in answer to the interrogatories hereto annexed, to wit:

1st. In answer to the first interrogatory the witness says:

Ans. I know Richard, Mary E., and H. H. Christmas, and years ago I knew Willie Lyons. Richard and Mary E. Christmas are husband and wife. Harry H. Christmas is the son of Richard Christmas. I don't know who else are parties to this suit.

2nd. In answer to the second interrogatory the witness says:

Ans. I have examined the promissory note referred to. Mary E. Christmas is the beneficial owner of said note. It is held by Richard Christmas, her husband, as trustee for her.

3rd. In answer to the third interrogatory the witness says:

Ans. I have examined the paper, marked Exhibit "B," referred to. I know by the signature thereto that Harry H. Christmas executed the same. I am acquainted with the handwriting and signature of said Harry H. Christmas from having seen him write and sign his
764 name. I recognize the signature to said paper as being in his handwriting. Harry H. Christmas left here intending to go to California, and since, I am informed, he has gone to Alaska.

4th. In answer to the fourth interrogatory the witness says:

Ans. I do know a note like that mentioned in the writing, marked Exhibit "B," and the one that I suppose, from the writing, was intended to be described therein. And I know it from the fact that it corresponds in date with the note described in said assignment, and nearly in amount when interest is added. It corresponds also in the names of the parties and the place where drawn. I saw this note—that is, the note marked Exhibit A to the interrogatories—soon after it was made, and remember it more exactly than I would otherwise do in consequence of the indorsement on it signed by Willie Lyons. It may or may not be the same note that was held by Payne, Huntington & Co. as collateral, as I am not certain that there may not have been other notes of the same amounts and description. I know nothing as to the particular note that
765 was held by Payne, Huntington & Co., except from information. The note that I suppose as above was intended to be described in the said paper B was a note dated Vicksburg, 22d June, 1866, for eighty-three hundred and thirty-nine $\frac{90}{100}$ dollars, which, with its interest up to the date of its assignment, would be a little over the sum of eighty-eight hundred dollars mentioned in the paper "B," drawn by Willie Lyons in favor of H. H. Christmas, and payable at the counting-house of Payne, Huntington & Co., New Orleans, on the first day of

December, 1866. Said note is now attached to the interrogatories, marked Exhibit "A." I do not know where the said note was at the date of the Exhibit "B," to wit, the first of May, 1868, except from information.

5th. In answer to the fifth interrogatory the witness says:

Ans. I do know that the writing which is filed with the interrogatories as Exhibit "B" was made for the purpose of assigning to Mary E. Christmas the note therein described, and which, for the reasons stated in my last answer above, I have no doubt is the note, Exhibit "A," filed with the interrogatories. Harry H. Christmas executed said paper
766 as above stated. I make said paper, Exhibit "B," a part of my answer. I know that such was the intent or purpose of said party in so executing said writing, from the facts before stated, and qualified by those statements. I don't know the consideration for said assignment, except from the paper "B" itself, and that I have some knowledge also and information in relation to the indebtedness of H. H. Christmas to Mary E. Christmas upon a land sale, and also as to his indebtedness to Payne, Huntington & Co., from information, and of arrangements made by Richard Christmas, as trustee for his wife, Mary E. Christmas, to raise funds to take up said indebtedness to Payne, Huntington & Co., and to buy said note.

6th. In answer to the sixth interrogatory the witness says:

Ans. I know nothing as to the matters of the sixth interrogatory except from information.

7th. In answer to the seventh interrogatory the witness says:

Ans. I never had possession of said note after the 1st day of May, 1868.

8th. In answer to the eighth interrogatory the witness says:

Ans. Some time in 1868, and about the summer, Richard Christ-
767 mas called at my office, myself, and *and* partner, John G. Simrall, being his regular attorneys, and showed me a letter, and, I think, an advertisement, giving information of a sale of such a note as Exhibit "A," to be held in New Orleans in a few days thereafter, to satisfy a debt of Harry H. Christmas to Payne, Huntington & Co. Richard Christmas was trustee for his wife, Mary E. Christmas, of property near Louisville, Kentucky, of large value, and he wanted to protect her interest in the note. We advised him to make some efforts to arrange with the banks for a loan upon the security of her property, and finally, under our advice, he made a contract of sale of a part of the land he held in trust for his said wife to Alfred Harris and Worden P. Hahn, and upon the faith of this Harris and Kahn became bound upon paper to about the amount of $4,000 00; and I think he raised about that amount from said paper and money he received from them, to be used for the protection of said note. We also advised him to apply to a commission merchant here to telegraph to his correspondent in New Orleans to protect said note. I cannot state, except from information, whether any money was raised, or by or through whom, or what was done
768 with it, or anything as to the payment of said account, or obtaining of said note "A." The contract of sale before mentioned was carried into execution by the making, by said Richard Christmas as trustee for his wife, Mary E. Christmass, of deeds—one to Worden P. Hahn, and the other to Glorvina E. Harris, the wife of Alfred Harris, authenticated copies of which deeds are filed with, and made part of, the foregoing deposition of Richard Christmas. I know the title under which Mary E. Christmas owned said land, having drawn most of the deeds myself. Copies are filed with said deposition of Richard Christmas. I consider it unnecessary to state anything more than is shown by the said copies.

9th. In answer to ninth interrogatory the witness says:
Ans. This interrogatory is addressed to Richard Christmas; but I know that he acted as trustee for his wife.
10th. In answer to the tenth interrogatory the witness says:
Ans. I know of nothing else that I deem material.

W'M S. BODLEY.

769 And the said William Brown being about the age of forty-three years, and having been first cautioned and sworn by me to testify the truth, the whole truth, and nothing but the truth in the matter of the controversy aforesaid, I did carefully examine the said William Brown, and he did thereupon depose, testify, and say as follows, in answer to the interrogatories hereto annexed, to wit:

1st. In answer to the first interrogatory the witness says:
Ans. I know Richard Christmas, and Harry H. Christmas, who is the son of Richard Christmas. I don't know the other parties.
2nd. In answer to the second interrogatory the witness says:
Ans. I don't know.
3rd. In answer to the third interrogatory the witness says:
Ans. I have examined the paper, Exhibit "B," referred to. It was executed by Harry H. Christmas; this I know from the signature to it, which is in the handwriting of Harry H. Christmas. I know his handwriting and signature from having seen him write and sign his name hundreds of times. He was employed as bill clerk in the office of the American Express Company, in Louisville, Kentucky, for about
770 one year, during which time I also was employed in said office. I only know from information that said Harry H. Christmas is somewhere on the Pacific coast. He left here with the intention of going to California.
4th. In answer to the fourth interrogatory the witness says:
Ans. I know nothing about these matters.
5th. In answer to the fifth interrogatory the witness says:
Ans. I know nothing of the matters inquired about.
6th. In answer to the sixth interrogatory the witness says:
Ans. I know nothing of the matters of this interrogatory.
7th. In answer to the seventh interrogatory the witness says:
Ans. I never had possession of said note at any time.
8th. In answer to the eighth interrogatory the witness says:
Ans. I know nothing about the matters of this interrogatory.
9th. In answer to the ninth interrogatory the witness says:
Ans. I don't know anything about it.
10th. In answer to the tenth interrogatory the witness says:
771 Ans. I know of nothing further material to either party.

W. BROWN.

UNITED STATES OF AMERICA,
District of Kentucky, City of Louisville, ss:

Be it remembered that, on this third day of April, in the year of our Lord one thousand eight hundred and sixty-nine, I, James A. Beattie, a commissioner duly appointed by the circuit court of the United States for the district of Kentucky, and commissioned as such, with power and authority to take acknowledgments of bail, affidavits, and depositions of witnesses in civil cases, and to exercise the other powers conferred on such commissioners by the acts of Congress, do hereby certify that the reason for taking the foregoing depositions is, that the witnesses

A. O. Brannin, Wm. S. Bodley, and Wm. Brown reside in the city of Louisville, in the State of Kentucky, and the witnesses Richard Christmas, W. P. Hahn, and Charles Tilden reside in the county of Jefferson, in the said State, both of which places are more than one hundred miles from the city of Jackson, in the State of Mississippi, the place of trial of the said cause.

I further certify that no notifications of the time and place of
772 taking the deposition, signed by me, was made out and served on the respondent, or his attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because the said depositions were taken by agreement on interrogatories filed, and neither party was present in person, or by agent, or attorney, (except in the case of Richard Christmas' deposition, when he was present as the witness,) at the taking of said depositions.

I further certify that, on the twenty-ninth day of March, A. D. 1869, and other days shown above, I was attended by the witnesses, who were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned and sworn to testify the whole truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements; and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession, for the purpose of mailing the same, with my own hand, to the court for which the same were taken.

I further certify that I am not of counsel or attorney for, or of kin to, either of the parties in said depositions and caption named,
773 or in any way interested in the event of the said cause named in the caption.

In testimony whereof I have hereunto set my hand and seal this third day of April, in the year of our Lord one thousand eight hundred and sixty-nine, and the independence of the United States the ninety-third.

[L. S.] JAMES A. BEATTIE,
U. S. Commissioner Circuit Court of the U. S. for the District of Kentucky.

Fees and postage on the above depositions, twenty-five $\frac{70}{100}$ dollars, paid by compl't Richard Christmas.

JAMES A. BEATTIE, *Commissioner.*

The "copy" of the paper referred to and made part of the deposition of Richard Christmas, in the fifth answer thereof, is as follows, to wit:

"*Copy.*"

Mary E. Christmas, having this day obligated herself to me to pay Payne, Huntington & Co., of New Orleans, my account due them for supplies amounting to about three thousand five hundred dollars now due, in consideration of which I hereby transfer in full to said Mary E. Christmas a note of Willie Lyons, of Mississippi, payable to me for about *eight thousand eight hundred*, payable at the counting-
774 house of Payne, Huntington & Co., New Orleans, and dated at Vicksburg, Mississippi, about June 22, 1866. Said note is held by Payne, Huntington & Co. as collateral security for my account due them, and is now in suit in U. States court, at Jackson, Mississippi, May 1st, 1868.

HARRY H. CHRISTMAS.

(Endorsed:) This is the "copy" of paper referred to, filed with and made part of the annexed deposition of Richard Christmas, in the fifth answer thereof, taken to be read as evidence on the part of the complainants in the case of Richard Christmas and wife and others against Willie Lyons, now pending in the circuit court of the United States for the fifth circuit and southern district of Mississippi, in chancery, No. 46.

JAMES A. BEATTIE,
U. S. Commissioner.

Exhibit (X) to the foregoing deposition of Richard Christmas is as follows, to wit:

PAYNE, HUNTINGTON & CO.
vs.
HARRY H. CHRISTMAS. } 4th district court, No. 21532.

Statement.

Amount of sale	$200 00
Costs and charges:	
Printing, E. Picayune	$19 50
" F. Bee	19 50
775 Clerk's fees	14 05
Sheriff's "	7 25
Commission on sale	4 00
Exchange duty	1 00
U. S. int. rev. stamps	.....
Curator ad hoc fees, A. Robert	50 00
	$115 30

I certify that the above is a correct statement.
H. L. DOWNS, *Dy Sh'ff.*

Broux and Fenners, attorneys' fee, for bringing the suit...	100 00
	$215 30

Rec'd payment of Summers and Brannin two hundred and fifteen dollars and thirty cents, for the costs incurred in the above suit.
PAYNE, HUNTINGTON & CO.

(Endorsed:) (X.) This is Exhibit X referred to, filed with and made part of the annexed deposition of Richard Christmas, taken to be read as evidence on the part of complainants in the case of Richard Christmas and wife and others vs. Willie Lyons, now pending in the circuit court of the United States for the fifth circuit and southern district of Mississippi, in chancery, No. 46.

JAMES A. BEATTIE,
U. S. Commissioner.

776 Exhibit "C" to the said deposition of Richard Christmas is as follows, to wit:

This indenture make this 30th day of August, in the year 1855,

between Richard Christmas, and Mary E., his wife, of the first part, and James Y. Christmas, of the second part, witnesseth:

That whereas the said Mary, then Mary Philips, on the fourth day of October, A. D. 1852, owned *owned* property hereinafter conveyed, which, by marriage articles of that date, was agreed to be settled for her sole, separate, and exclusive use, with full power to her at all times to dispose of the same, or any part thereof, at her discretion, by deed, will, or otherwise, as if she were unmarried; which articles were executed by the said Richard and Mary, and are hereby confirmed:

And whereas she now desires to dispose of the same by virtue of said articles, and of her right in said property, in order that the same may be conveyed to the said Richard in trust, for her sole use, and with power to her to dispose of the same as above:

Now, in virtue of the premises, and in consideration also of one dollar to them paid by said party of the second part, the said Richard Christmas, and Mary, his wife, hereby grant, bargain, sell, and convey unto the said party of the second part all the property in pos-
777 session, or otherwise, which belonged to the said Mary at the time of her marriage to the said Richard, or which has been or may be acquired by her during the marriage, which property of the said Mary includes her share of the land, slaves, &c., devised to the children of her father, David B. Phillips, by the will of her grandfather Thomas Philips, and her share of the inheritances from her father, together with the increase of said property:

To have and to hold the said property, with its incresse and appurtenances, unto the said party of the second part, his heirs and assigns, forever.

Witness the signatures of said parties the date first herein written.

R. CHRISMAS. [SEAL.]
MARY E. CHRISTMAS. [SEAL.]
JA'S Y. CHRISTMAS. [SEAL.]

I, Ch. M. Thurston, clerk of the county court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed was produced to me in my office, and acknowledged and delivered by Richard Christmas, and Mary E., his wife, and James Y. Christmas, parties thereto, to be their act and deed; and that I have recorded it and this certificate in my said office.

Witness my hand this eighth day of September, 1855.

CH. M. THURSTON.

778 STATE OF KENTUCKY, *Jefferson County, sct:*

I, T. Jack Conn, clerk of the county court of the county af's'd, do certify that the foregoing is a full, true, and complete copy of the deed from Richard Christmas and wife to James Y. Christmas, as taken from the records of said court.

In testimony whereof I hereunto set my hand as clerk of s'd court, and affix the seal thereof, at office in Louisville, Ky., this 1st day of April, 1869.

[L. S.]

T. JACK CONN,
Clerk Jeff. Co. Court.

Recorded in Deed Book 93, p. 571.

(Endorsed:) (C.) This is Exhibit C referred to, filed with and made part of the annexed deposition of Richard Christmas, taken to be read as evidence for the complainants in the case of Richard Christmas and

wife and others against Willie Lyons, now pending in the circuit court of the United States for the fifth circuit and southern district of Mississippi, in chancery, No. 46.

JAMES A. BEATTIE,
U. S. Commissioner.

Exhibit "D" referred to in the deposition of said Richard Christmas is as follows, to wit:

This indenture, made this 30th day of August, in the year 1855,
779 between James Y. Christmas, of the first part, Richard Christmas, of the second part, and Mary E. Christmas, his wife, of the third part, witnesseth that the said party of the first part, in consideration of his agreement as recited in the deed to him from Richard, and Mary, his wife, bearing even date herewith; and in further consideration of one dollar to him paid by said Richard, grants, bargains, sells, and conveys unto the said Richard Christmas all the property in possession or otherwise which belonged to the said Mary at the time of her marriage with said Richard, or which has been or may be acquired by her during the marriage, which property of said Mary includes her share of the land, slaves, &c., devised to the children of her father, David B. Phillips, by the will of her grandfather Thomas Phillips, and her share of the inheritance from her father, together with the increase of said property:

To have and to hold the said property, with its increase and appurtenances, unto the said Richard Christmas, his heirs and assigns, forever:

In trust, however, for the sole, separate, and exclusive use of the said Mary E. Christmas, with full power to her at all times to dispose of the same, or any part thereof, at her discretion, by deed, will, or other-
780 wise, as if she were unmarried at the time of doing so; and in case of her dying without having disposed of said property, all that may remain undisposed of shall pass to her issue, and failing issue to her own blood-relations and heirs forever.

Witness the signatures of said parties the date first herein written.

JAS. Y. CHRISTMAS. [SEAL.]
MARY E. CHRISTMAS. [SEAL.]
R. CHRISTMAS. [SEAL.]

I, Ch. W. Thurston, clerk of the county court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed was produced to me in my office and acknowledged and delivered by James Y. Christmas, and Richard Christmas, and Mary E., his wife, parties thereto, to be their act and deed; and that I have recorded it and this certificate in my said office.

Witness my hand this eighth day of September, 1855.

CH. M. THURSTON.

STATE OF KENTUCKY, *Jefferson County, set:*

I, T. Jack Conn, clerk of the county court of the county of Jefferson aforesaid, do certify that the foregoing is a full, true, and complete copy of the deed from James Y. Christmas, &c., to Mary E. Christmas, as taken from the records of said court.

781 In testimony whereof I hereunto set my hand as clerk of said court, and affix the seal thereof, at office in Louisville, Ky., this 1st day of April, 1869.

[L. S.]

T. JACK CONN,
Clerk Jeff. Co. Court.

(Endorsed:)
Recorded in Deed Book 93, p. 570.

(D.) This is Exhibit D referred to, filed with and made part of the annexed deposition of Richard Christmas, taken to be read as evidence for the complainants in the case of Richard Christmas and wife and others against Willie Lyons, now pending in the circuit court of the United States for the fifth circuit and southern district of Mississippi, in chancery, No. 46.

JAMES A. BEATTIE.
U. S. Commissioner.

Exhibit "E" to the said deposition of said Richard Christmas is as follows, to wit:

This indenture, made and entered into this 22d day of June, A. D. 1868, by and between Richard Christmas, and Mary E. Christmas, his wife, the said Richard Christmas acting in his own behalf, and the said Mary E. Christmas (who is at the present time residing in Europe) acting by said Richard Christmas, her trustee, agent, and attorney in fact, duly constituted, authorized, and empowered to act as such
782 by power of attorney recorded in the Jefferson County clerk's office, parties of the first part, and Warden P. Hahn, of the city of Louisville, Ky., party of the second part, witnesseth that the said Mary E. Christmas, by her agent and attorney in fact, Richard Christmas, for and in consideration of the sum of two thousand two hundred and fifty dollars in hand paid, the receipt whereof is hereby acknowledged, has this day bargained and sold, and now hereby bargains, sells, enfeoffs, and conveys, to the said W. P. Hahn the following-described tract or parcel of land, (being the individual property of the said Mary E. Christmas,) lying and being in the county of Jefferson, and State of Kentucky, and on the east side of the National Turnpike road as now established, and about three miles south of the city of Louisville, and bounded and described as follows, to wit: Beginning in the centre of the said road, in the southern limit of a tract of land conveyed by Gideon Walker to G. E. Harris and W. P. Hahn, and is claimed to be the division line between said Christmas' tract of land and the ground of the said W. P. Hahn; thence N. 89° E. 101 poles to a stone in Schwarin's line; thence with the same south 15.96 p's to a stone; thence S. 89° W. 99.70 p's to a stone in the centre of said National Turnpike road;
783 thence with the said central line N. 4¾ W. 16 p's to the beginning, containing just ten acres, and all the estate, right, title, and interest, and fee of her, the said Mary E. Christmas, of, in, and to the same, as well also as all the claim and right of the said Richard Christmas of, in, and to the same: To have and to hold the said tract of land, with all the appurtenances thereon and thereunto belonging, unto the said W. P. Hahn, and unto his heirs and assigns forever, with clause and covenants of general warranty from the said Mary E. Christmas as to title.

This deed further witnesseth that the said Mary E. Christmas instituted suit for the recovery of a part of what is claimed to be the southern part of W. P. Hahn tract, sold and conveyed to him by Gideon Walker, and adjoining and lying immediately north of the ten acres above conveyed, and a part was decreed by the chancellor, from which decree Gideon Walker, who was the vendor and had warranted the title to said second party, appealed:

Now, it is the express understanding and agreement, and of the essence of this transaction, contract, and trade, that, upon a final hearing of

said cause, whatever land, be it more or less, may be decreed to said Mary E. Christmas, she, by her agent and attorney, Richard
784 Christmas, and he on his own behalf, bind themselves to sell and convey to the said W. P. Hahn, at and for the sum of two hundred and twenty-five dollars per acre, one-third cash, to be paid as soon as the deed is made, and the balance in equal instalments at one and two years, with interest, and a lien to be retained upon the land sold to secure the deferred payments.

In witness whereof Richard Christmas and Mary E. Christmas, by Richard Christmas, her trustee, agent, and attorney in fact, have hereunto set their hands this day and date first above written.

The interlineation of the words "two hundred and fifty," between lines 13 and 14 on first page, and of the words "and twenty-five," lines 20 and 21, on this page, done before the signing hereof; also, words claimed to be interlined on 25th line of *of* first page, and the *quanities* erased, and the words "a part of what is claimed to be the," and "a part," interlined on second page.

R. CHRISTMAS.
MARY E. CHRISTMAS,
By R. CHRISTMAS, *her Agent.*
R. CHRISTMAS, *Trustee.*

I, T. Jack Conn, clerk of the county court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed
785 was produced to me in my office, duly stamped as required by act of Congress, and acknowledged and delivered by R. Christmas to be his act and deed, in his own right, and as trustee and agent of Mary E. Christmas, his wife, parties thereto, and that I have recorded it and this certificate in my said office.

Witness my hand this 22d day of June, 1868.

T. JACK CONN, *Clk.*

STATE OF KENTUCKY, *Jefferson County, set:*

I, T. Jack Conn, clerk of the county court of the county aforesaid, do certify that the foregoing is a full, true, and complete copy of the deed from Richard Christmas and Mary E. Christmas to Worden P. Hahn, as taken from the records of said court.

In testimony whereof I have hereunto set my hand as clerk of said court, and affix the seal thereof.

[L. S.] T. JACK CONN, *Clk.*

(Endorsed:)

Recorded in Deed Book No. 138, page 281.

(E.) This is Exhibit E referred to, filed with and made part of the annexed deposition of Richard Christmas, taken to be read as evidence on the part of the complainants in the case of Richard Christmas and wife and others against Willie Lyons, now pending in the circuit
786 court of the United States for the fifth circuit and sothern district of Mississippi, in chancery, No. 46.

JAMES A. BEATTIE,
U. S. Com'r.

Exhibit "F," referred to in the foregoing deposition of Richard Christmas, is as follows, to wit:

This indenture, made and entered into this 22d day of June, 1868, by and between Richard Christmas, and Mary E. Christmas, his wife, the said

Richard Christmas acting in his own behalf, and the said Mary E. Christmas (who is at present residing in Europe) acting by Richard Christmas, her trustee, agent, and attorney in fact, duly constituted, authorized, and empowered to act as such by power of attorney recorded in the Jefferson County court clerk's office, in the State of Kentucky, parties of the first part, and Glorvina E. Harris, wife of Alfred Harris, of the city of Louisville, Ky., party of the second part, witnesseth that the said Mary E. Christmas, by her agent and attorney in fact, Richard Christmas, for and in consideration of the sum of two thousand dollars in hand paid, the receipt whereof is hereby acknowledged, has this day bargained and sold, and now hereby bargains, sells, and conveys, to the said Glorvina E. Harris, wife of Alfred Harris, the following-described
787 tract of land, (it being individual property of the said Mary E. Christmas,) lying in the county of Jefferson and State of Kentucky, on the west side of the National Turnpike road as now established, and about three miles south of the city of Louisville, and bounded as follows, to wit: Beginning in the centre of said road, at a point claimed by Walker and Harris to be in the southern line of the tract of land conveyed by Gideon Walker to Glorvina E. Harris and W. P. Hahn, and also by said Walker and Harris claimed to be the dividing line between said Christmas tract and said Glorvina E. Harris; thence with said line south 88¼ W. 75.27 poles to a stone; thence south 54 W. 31.80 poles to a stone; thence north 88¼ E. 102.48 poles to a stone in the centre of the said National Turnpike; thence with the centre of same 4¾° W. 18.05 poles to the beginning, containing ten acres, and all the estate, right, title, interest, and fee of her, the said Mary E. Christmas, of, in, and to the same, as well also as all the claim and right of the said Richard Christmas:

To have and to hold the said tract of land to the said G. E. Harris, her heirs and assigns, forever, with covenant of general warranty from said Mary E. Christmas and Richard Christmas *and Richard Christmas* as to title.

788 This deed further witnesseth that the said Mary E. Christmas instituted suit in the Louisville chancery court for the recovery of a part of what is claimed to be the southern part of G. E. Harris' tract, sold and conveyed to her by Gideon Walker, and adjoining and lying immediately north of the ten acres above conveyed, and a part of said tract was decreed by the said chancellor to belong to said Mary E. Christmas, from which decree Gideon Walker, who was the vendor to said Harris, and had warranted the title to her, appealed, and the case is in the appellate court undecided:

Now, it is the express understanding and agreement, and of the essence of this transaction, contract, and trade, that upon a final hearing of said cause, whatever land (be it more or less) may be decreed to said Mary E. Christmas, she, by her attorney aforesaid, Richard Christmas, and he on his own behalf, bind themselves to sell and convey same to said G. E. Harris, at the sum of two hundred dollars per acre, one-third to be paid as soon as the deed is made, and the balance in equal instalments at one and two years, with interest, a lien to be retained upon the land sold to secure the deferred payments.

In witness whereof Richard Christmas, and Mary E. Christ-
789 mas, her trustee, agent, and attorney in fact, have hereto set their hands the day and date first above written.

R. CHRISTMAS.
MARY E. CHRISTMAS,
By R. CHRISTMAS,
Trustee, Agent, and Attorney in fact.

I, T. Jack Conn, clerk of the county court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed was produced to me in my office, duly stamped as required by act of Congress, and acknowledged and delivered by R. Christmas to be his act and deed in his own right, and as attorney in fact, trustee, and agent for Mary E. Christmas, his wife, parties thereto, and that I have recorded and this certificate in my said office.

Witness my hand this 22d day of June, 1868.

T. JACK CONN, *Clk.*

STATE OF KENTUCKY, *Jefferson County, set:*

I, T. Jack Conn, clerk of the county court of the county aforesaid, do certify that the foregoing is a full, true, and complete copy of the deed from Richard Christmas and Mary E. Christmas to Glorvina E. Harris, as taken from the records of said court.

790 In testimony whereof I have hereto set my hand as clerk of s'd court, and affix the seal thereof.

[L. S.] T. JACK CONN, *Clk.*

Recorded in book 138, page 281.

(Endorsed:) "F." This is Exhibit "F" referred to, filed with and made part of the annexed deposition of Richard Christmas, taken to be read as evidence on the part of the complainants in the case of Richard Christmas and wife and others against Willie Lyons, now pending in the circuit court of the United States for the fifth circuit and southern district of Mississippi, in chancery, No. 46.

JAMES A. BEATTIE,
U. S. Com'r.

Exhibit "G" to the said deposition of said Richard Christmas is as follows, to wit:

I, Thomas Phillips, of the county of Jefferson, in the Commonwealth of Kentucky, being on the day of the date hereof in the enjoyment of common health and the full possession of my natural senses, do make and declare this instrument as and for my last will and testament, and herein and hereby do make the following allotment, division, and distribution of my whole estate, out of which all my just debts are to be paid, with all necessary exactness and despatch, expressly can-

791 celling, annulling all or any will by me heretofore made.

1st. To my son Samuel Phillips I give, and bequeath to him and his heirs, forever, the tract of land on Beargrass, whereon my father resided at the time of his death, supposed to contain three hundred acres. He is to hold and enjoy the whole tract, whether the quantity be more or less than 300 acres. Also the following slaves, to wit: Harry Stewart, Eli and Ben Shields. But he is to account for and pay over to my estate the sum of three thousand eight hundred dollars, without interest, in three equal annual payments, after my decease.

2d. To my daughter Nancy Rudd and her heirs, forever, the tract of land lying on the Ohio River, about four miles above the city of Louisville, whatever the quantity may be at the time of my death, as I may before that event sell and dispose of some part of it. At present the tract is supposed to contain 230 or 240 acres, and was formerly the property of my deceased brother Richard Phillips, and descended from him to me. I give and devise the same to my said daughter and her heirs as af's'd. Also the following slaves, to wit: Cyrus, Charles, Albert,

Jane, and Nelly, and the future increase of the females of them I devise to her in like manner.

792 3rd. To my son Richard and his heirs, forever, I give and devise one-third in quantity of the tract of land whereon I now live, containing about 1,100 acres, beginning at the southeast corner of said tract next the lands on which Ludlow Clarke now lives, and running thence northwestwardly with the line of Preston's heirs, so far that a straight line extended westwardly (parallel to my southern boundary) to the western boundary of said 1,100 acres, will include on that end of the tract the one-third part thereof. Also the following slaves, viz: John, Stephen, and Bill.

4th. To my son Henry I give and devise, forever, to him and his heirs, one-third part in quantity of the tract of land whereon I now live, beginning at the point ascertained as the northeast corner of the part above devised to my son Richard, and extending thence northwardly with the line of Preston's heirs, so far that a straight line parallel to the southern boundary of said tract, when extended to the western boundary of the 1,100 acres, will embrace the one-third part of the whole tract. Also the following slaves, to wit: Little Anderson, Betty and Cynthia, Handy, Mary and her child Francis, and the future increase of the females of them.

793 5th. To my son Murray I will and devise the remaining one-third part in quantity of the 1,100 acres before mentioned, to adjoin on the north the part above bequeathed to my son Henry. Also the following slaves, to wit: Nat, Whit, Big Anderson, and Daniel, Susan and Manuel, (children of Cynthia,) Celia and her two children Caroline and Charles, Little Chaucey and her child, and Voirus and her child, and Eveline, and the future increase of the females of them. I also own a corner lot in the city of Louisville, on Market street, in Preston's enlargement, formerly belonging to Sabret Johnson, and now occupied as a wagon yard. I also own 26½ feet, part of half-acre lot number , on Jefferson street; and have also an interest in the same lot obtained from the heirs of Samuel Phillips and Joseph Hunter. All my right and interest in this property I will and bequeath to my said son Murray and his heirs forever. But should he depart this life without lawful issue, all the rights and interests vested in him by any devise in this will is, by that event, to be vested in and belong to his surviving brothers and sister and their heirs, and the descendants of such of them as are not now or may not then be living, upon the same terms and

794 conditions upon which the specific devises to them herein have been specially made. I also give and devise to my said son Murray six of my horses, and gear for each, such as he may choose; four work steers, s'x cows, twenty sheep, all the household and kitchen furniture, including my books, but excepting such articles of bedding as may remain after he has selected three beds and furniture for his own use; also one waggon, and one cart, and a supply of farming implements sufficient to cultivate the farm before given him. I furthermore give and devise to him and undivided moiety of four hundred acres of land, near Mann's Lick, including Cox's Knobb, entered in the name of Peter Belay.

6th. To my grandchildren, descendants of my deceased son David, I give and devise, forever, nine hundred and fifty acres of land, whereon their father lived at the time of his death, being all my interest in 1,000 acres, surveyed in the name of my deceased father, Jenkins Phillips. A part of this 950 acres was bought out of a survey of George Wilson,

and part out of a survey made in the name of Kamp. Whether the quantity contained within the boundary be more or less than 950 acres,
795 it is to be theirs. Also the following slaves, to wit: Harry Gatewood, Little Harry, Yellow Jim, Priscilla, and Jim and Toney, (her children,) and Big Chauncey, and the future increase of the females of them. But should either of my said grandchildren die without lawful issue then living, the rights and interests in the property hereby given such grandchildren is then to become the right and property of the survivor or survivors of them; and should they all depart this life without lawful issue living at the time of their decease, the property is then to vest in and become the right and property of my surviving children, and the issue of such of them as now are and may then be dead, to be divided among them according to the laws of distribution of the estates of those dying intestate.

7th. To my grandchildren, descendents of my deceased son Jenkin Phillips, I give and devise, forever, a tract of land in the Pond settlement, county of Jefferson, adjoining the lands of Col. John Jones, which was conveyed to me by William Linn for 333¼ acres; also one hundred and seventy acres, conveyed to me by Edward Slaughter and wife, adjoining the land above devised to the children of my deceased son David B. Phillips; likewise two hundred acres adjoining the last-mentioned tract, conveyed to me by Daniel Sullivan. My said grandchildren are
796 to hold and enjoy all my right and interest in those several tracts of land, whatever the quantity may be within their boundary. I also give and devise to them the following slaves, viz: Black Jim Elliott, Ben, Abraham, Sally, Agatha, and Harriett, and the present and the future increase of the females of them. But nevertheless, should all or any of said children of my deceased son Jenkin Phillips depart this life without lawful issue then living, the rights and interests accruing to them by virtue of any devise in this will is then to vest in and pass to the survivor or survivors of them, &c., as directed in the case of the foregoing devise to the children of my deceased son David B. Phillips.

8th. To my grandson and his sister Mary, children of my deceased son Tho. J. Phillips, I give and devise the sum of three thousand dollars each, to be paid over to each one as they shall arrive at the age of twenty-one years; but if my said granddaughter Mary Phillips should marry before she becomes 21 years old, she is, upon such marriage, to receive the aforesaid sum of $3000, hereby devised to her. And for the education and support of my said grandchildren, until they shall become entitled to receive the aforesaid legacy, I will and direct that my executors pay and appropriate out of my estate annually the sum of one hundred dollars to each; also to my said grandson Thomas
797 Phillips I give and devise a negro boy, named Bill, child of negro Celia; and should either or both of my said grandchildren die leaving no lawful issue alive, I will and direct that the money and property above devised to those so dieing shall vest and pass, according to the rule prescribed in the devises heretofore made, to the children of my deceased sons David and Jenkin.

9th. I have four lots in the town of Jeffersonville, State of Indiana, the numbers of which I do not recollect. Those lots I give and bequeath forever to my sons Samuel, Richard, Henry, and my daughter Nancy Rudd, and their heirs respectively, to be divided among them as follows: My son Samuel is to have the lot lying highest up the Ohio River; Richard, the lot next below; Henry, the lot next below him, and Nancy, the lot lying lowest down the river.

10th. I furthermore do hereby emancipate and set free at my death, from all further servitude as a slave, my negro woman named Sooky; and should the said negro woman, from age or infirmity, become unable to support herself, I direct that my son Murray Phillips, or his heirs, shall maintain her the ballance of her life, unless she refuse to stay with him or them.

11th. The ballance of my estate remaining and not disposed of
798 in the foregoing devises consists of real and personal property, debts due, and to become due me, and money on hand. I will and direct that my executors, as soon after my decease as the interest of my estate may require, sell whatever consists in property in such manner as they may judge best; collect my debts due from others, and add thereto whatever amount of money I may have on hand, so as to ascertain, with all practicable despatch which may appear best adapted to the interest of my heirs and legatees, the whole amount of the surplus left, when converted into money. This surplus left, when converted into money, this surplus, I will and direct shall be disposed of in the following manner: One tenth part I will and bequeath to the children of my deceased son David, to be equally divided between them; one tenth part to the children of my deceased son Jenkin, to be equally divided between them; but in case any of my said grandchildren should die leaving no lawful issue alive, the portion of any such is then to pass and vest in others, as directed in the devisees hereinbefore made them. The ballance of such surplus I will and direct shall be equally divided between my five children hereinbefore named, now living, which they shall hold and enjoy subject to the provisions contained in any previous devise to either of them respectively.

799 12th. Thus I have, in language, I think, sufficiently plain to exclude all ambiguity, endeavored to do justice among their children and their descendants. I hope they will divide my humble acquisitions in the world between them in peace, without jarring or contention, or a resort to law-suits with each other; but should any legatee attempt to annul and set aside this will, from thenceforth any devise herein made to such legatee shall stand revoked, and such legacy thereafter pass to and vest in my other legatees and heirs, according to the terms and conditions of the several devises to them respectively made; and when in relation to slaves, I have used the terms "future increase," such increase as may be future to the date of this will is (only) meant and intended.

13th. I except out of my 11th devise in this will the lands I purchased near Mann's Lick; the quantity I do not recollect, but suppose it to be sixteen or 1,700 acres; it was conveyed by Joseph Brooks, deceased, to Elisha Standiford; this land I will and bequeath to my three sons Richard, Henry, and Murray, to be equally divided between according to quantity and quality. The children of my deceased son Jefferson Phillips are also excepted from the operation of said 11th
800 devise, and I intend for them only what I have specified in the 8th devise in this will. I also have one hundred acres of land adjoining the 333⅓ acres devised to the children of my deceased son Jenkin; this land I also will and devise to my said grandchildren, descendants of my son Jenkin, to hold in the same manner and by the same tenure of the other property herein given to them.

Lastly. I hereby nominate and appoint my two sons Samuel and Richard, and my son-in-law James Rudd, executors of this my last will and testament.

In testimony whereof I have hereunto subscribed my name and affixed my seal this 27th day of February, 1841.

THO'S PHILLIPS. [SEAL.]

Witness:

HAMILTON POPE. WALKER MORRIS.
J. W. THORNBERRY. GEO. F. POPE.
J. P. BEELER.

STATE OF KENTUCKY:

At a county court held for Jefferson County, at the court-house in the city of Louisville, on the 8th day of August, 1842, the foregoing instrument of writing, purporting to be the last will and testament of Thomas Phillips, dec'd, late of said county, was produced in court and proved by the oaths of James W. Thornberry, Jordan P. Beeler, and Walker Mor-
801 ris, three of the subscribing witnesses thereto; whereupon the same was established by the court to be the last will and testament of Thomas Phillips, dec'd, and ordered to be recorded, and is recorded in my office as clerk of said court; and, upon the motion of Samuel Phillips, Richard Phillips, and James Rudd, the executors therein named, who made oath according to law, execution of the same is granted them: whereupon they gave bond, with Amos Riley and Henry H. Phillips, their securities, in the penalty of fifty thousand dollars, conditioned according to law.

Atteste: CURRAN POPE, *Clk.*

A copy. Att.:

THOMAS A. MORGAN, *D. C.*

STATE OF KENTUCKY, *Jefferson County, sct:*

I, T. Jack Conn, clerk of the county court of the county aforesaid, do certify that the foregoing is a full, true, and complete copy of the last will and testament of Thomas Phillips, deceased, as taken from the records of said court.

In testimony whereof I have hereunto set my hand, as clerk of said court, and affix the seal thereof.

[L. S.] T. JACK CONN, *Clk.*

(Endorsed:)

Recorded in book 3, page 299.

802 (G.) This is Exhibit (G) referred to, filed with and made part of the annexed deposition of Richard Christmas, taken to be read as evidence for the complainants in the case of Richard Christmas and wife and others against Willie Lyons, now pending in the circuit court of the United States for the fifth circuit and southern district of Mississippi, in chancery, No. 46.

JAMES A. BEATTIE,
U. S. Commissioner.

Exhibit "H" to the foregoing deposition of Richard Christmas is as follows, to wit:

The undersigned, heirs and devisees of Thomas Phillips, deceased, late of Jefferson County, Kentucky, hereby grant, convey, release, and confirm to Mary Eliza Christmas all the right, title, and interest which has accrued, or may hereafter accrue, to the undersigned under the will of the said Thomas Phillips in and to a tract of land in Jefferson

County, Kentucky, containing two hundred and ninety-five acres, and being the same tract assigned to the said Mary Eliza by commissioners, under the authority of the Louisville chancery court, and which is fully described in the report of said commissioners on file in the office of the clerk of said court in suit No. 7839:

To have and to hold the said tract of two hundred and ninety-
803 five acres, with its appurtenances, forever, free and acquit from any claim by the undersigned, or those claiming under them, to the said Mary Eliza, her heirs and assigns, forever.

In witness whereof we have hereunto set our hands and seals the first day of August, A. D. 1855.

SALLY PHILLIPS KELLAR. [SEAL.]
THOMAS J. PHILLIPS. [SEAL.]
MURRAY PHILLIPS. [SEAL.]
H. H. PHILLIPS. [SEAL.]
MARY A. SWINDLER. [SEAL.]
JAMES SWINDLER. [SEAL.]
ELIZABETH PHILLIPS. [SEAL.]
RICHARD PHILLIPS. [SEAL.]

Witnesses:
ELIZA BOSWELL.
HENRY C. LEURS.

I, Curran Pope, clerk of the county court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed was produced to me in my office and acknowledged and delivered by Murray Phillips and Richard Phillips, parties thereto, to be their act and deed.

Witness my hand this sixth day of October, 1853.

CURRAN POPE.

I, Curran Pope, clerk of the county court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed was further acknowledged and delivered before me in my office by Elizabeth Phillips, a party thereto, to be her act and deed.

Witness my hand this seventh day of October, 1853.

CURRAN POPE.

804 I, Curran Pope, clerk of the county court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed was further acknowledged and delivered before me in my office by H. H. Phillips, a party thereto, to be his act and deed.

Witness my hand this seventeenth day of October, 1853.

CURRAN POPE.

I, Curran Pope, clerk of the county court of Jefferson, in the State of Kentucky, do certify that on this day the foregoing deed was further acknowledged and delivered before me in my office by Thomas J. Phillips, a party thereto, to be his act and deed.

Witness my hand this eighteenth day of October, 1853.

CURRAN POPE.

I, Ch. M. Thurston, clerk of the county court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing deed was again produced to me in my office, and at the request of the grantees I have recorded it and this and the foregoing certificates therein.

Witness my hand this eighteenth day of September, 1855.

CH. M. THURSTON.

STATE OF KENTUCKY, *Jefferson County, set:*

I, T. Jack Conn, clerk of the county court of the county af's'd, do certify that the foregoing is a full, true, and complete copy of the
805 deed from Thomas Phillips' heirs to Mary E. Christmas, as taken from the records of said court.

In testimony whereof I hereunto set my hand as clerk of s'd court, and affix the seal, at office in Louisville, Ky., this 1st day of April, 1869.

[L. S.] T. JACK CONN,
Clk Jeff. Co. Court.

(Endorsed:)

Recorded in Deed Book 93, p. 567.

(H.) This is Exhibit "I" referred to, filed with and made part of the annexed deposition of Richard Christmas, taken to be read as evidence for the complainants in the case of Richard Christmas and wife and others vs. Willie Lyons, now pending in the circuit court of the United States for the fifth circuit and southern district of Mississippi, in chancery, No. 46.

JAMES A. BEATTIE,
U. S. Commissioner.

Exhibit "I" referred to in the foregoing deposition of Richard Christmas is as follows, to wit:

Know all men by these presents that I, Mary Eliza Christmas, wife of Richard Christmas, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, the said Richard Christmas my true and lawful attorney in fact, for me and in my name and place and stead, to grant, bargain, sell, and convey, and to make, execute,
806 sign, seal, acknowledge, and deliver conveyances therefor, all my right, title, interest, claim, and demand in and to all that certain tract or parcel of land, with the improvements, lying and being in the county of Jefferson, State of Kentucky, containing about two hundred and ninety-five acres, being part of tract of about one thousand acres devised by Thomas Phillips, late of Jefferson County, Kentucky, to his three grandchildren S. H. S. Phillips, Mary Eliza Phillips, (now wife said Richard Christmas,) and Thomas J. Phillips, and which said tract has been partitioned between the said grandchildren by a decree of the circuit court of Jefferson County, Kentucky, and which said partition has also been finally accepted and confirmed by conveyances between said parties, and to which said decree of partition and conveyances reference may be had for a full description of said tract of land, it being the same tract which the said Mary Eliza Christmas conveyed to James Y. Christmas, and by him to the said Richard Christmas, in trust for the said Mary Eliza, his wife, for such price as he, my said attorney, may deem sufficient, hereby giving and granting unto my said attorney full power and authority to grant, bargain, sell, and convey, and to make, execute, sign, seal, acknowledge, and deliver all and any deeds
807 or conveyances of all my right, title, interest, claim, or demand in and to said tract of land, or any part or parcel thereof, hereby ratifying and confirming all that my said attorney shall lawfully do, or cause to be done, in the premises by virtue hereof.

In testimony whereof I have hereunto set my hand and seal this eleventh day of September, A. D. 1865.

MARY E. CHRISTMAS. [SEAL.]

Witness: P. ORD.

CONSULATE OF THE UNITED STATES,
City of Paris, Empire of France.

On this eleventh day of September, A. D. 1865, before me, the undersigned, personally appeared Mary Eliza Chrtstmas, wife of Richard Christmas, whose name is subscribed to the foregoing instrument as a party thereto, personally known to me to be the same person described in, and who executed the foregoing instrument of writing; and I do certify that this instrument from Mary Eliza Christmas to Richard Christmas was this day produced to me in my office at the city aforesaid, and which instrument was acknowledged by the said Mary Eliza Christmas to be her act and deed; and the contents and effect of the instrument being explained to the said Mary Eliza Christmas by me separately and apart, and without the hearing of her said husband, she thereupon declared that she did freely and voluntarily execute and deliver
808 the same to be her act and deed for the uses and purposes therein mentioned, without fear or compulsion or undue influence of her husband, and that she did not wish to retract the same, and consented that the same might be recorded.

Witness my hand and the consulate seal the day and year aforesaid.

[L. S.] JNO. G. NICHOLAY.
U. S. Consul.

10,257. Rec'd $2.

I, T. Jack Conn, clerk of the county court of Jefferson County, in the State of Kentucky, do certify that on this day the foregoing power of attorney was produced to me in my office, duly stamped as required by act of Congress, and that I have recorded it and this and the foregoing certificate in my said office.

Witness my hand this 13th day of July, 1866.

T. JACK CONN, *Clk.*

STATE OF KENTUCKY, *Jefferson County, sct:*

I, T. Jack Conn, clerk of the county court of the county aforesaid, do certify that the foregoing is a full, true, and complete copy of the power of attorney from Mary Eliza Christmas to Richard Christmas, as taken from the records of s'd court.

In testimony whereof I hereunto set my hand as clerk of s'd court, and affix the seal thereof, at office in Louisville, this 1st day of April, 1869.

[L. S.] T. JACK CONN, *Clerk.*

Recorded in Book 27, page 189.

809 (Endorsed:) (I.) This is Exhibit (I) referred to, filed with and made part of the annexed deposition of Richard Christmas, taken to be read as evidence on the part of the complainants in the case of Richard Christmas and wife and others vs. Willie Lyons, now pending in the circuit court of the United States for the fifth circuit and southern district of Mississippi, in chancery, No. 46.

JAMES A. BEATTIE,
U. S. Commissioner.

These depositions sealed up by me, and deposited in the post office at Louisville, Kentucky, prepaid, this third day of April, 1869.

JAMES A. BEATTIE,
U. S. Commissioner.

Filed 7 Ap'l, '69.

G. T. SWANN, *Clk.*

Opened by me by order of court Ap'l 8th, 1869.
GEO. T. SWANN, *Clk.*

And afterwards, to wit, on the 14th day of February, 1870, the same being a day of the special term of said circuit court of the United States begun and held in and for the fifth circuit and southern district of Mississippi, at Jackson, in said State of Mississippi, on the 4th Monday and 24th day of January, in the year of our Lord one thousand
810 eight hundred and seventy, pursuant to an order of said court duly made and entered on the minutes of said court at the November term thereof, 1869, the following order of reference was made in this cause, to wit:

WM A. GAINES AND HENRY S. JULIAN, ex'ors, &c., of John W. Russell, dec'd, et al., *vs.* WILLIE LYONS ET AL. } N. S., 86.—In chancery.

This cause coming on to be heard on the original and amended bills, answers, exhibits, and proofs, and upon the pro confesso against the defendant Willie Lyons, and the same having been argued and submitted, and it appearing that the complainants are entitled to the relief prayed for in their said bills:

It is ordered that the cause be referred to the clerk of this court to compute the amount due to complainants for debt, interest, and costs on their judgment rendered in this court on the 25th of May, 1860, against Richard Christmas; and also to compute the amount paid into court by Wiley Lyons on the judgments rendered against him in this court in favor of Harry H. Christmas, on the 13th of November, 1868, and that in favor of Mary E. Christmas, rendered on the 21 May,
811 1869, and the amount still due by him, together with the sums allowed to counsel for fees of collection on said judgments, and the sums paid to them on that account under the orders of this court, and to state the balance of the aggregate amount of said judgments against said Lyons, after deducting said attornies' fees in the said judgments against Lyons, and report to this court forthwith.

And on the 15th day of February, A. D. 1870, the following report of the commissioner, to whom this cause was referred by interlocutory order of said court, was filed in this cause in said court to wit:

In circuit court of the U. S., south. dist. of Mississippi.

WILLIAM A. GAINES AND HENRY S. JULIAN, ex'ors, &c., et al., *vs.* WILLIE LYON ET AL. } N. S., 86.—January special term, 1870. In chancery.

To the honorable the judges of said circuit court, in chancery sitting:

The report of George T. Swann, clerk of said court, pursuant to the interlocutory order of your honor made in this cause on Monday, the 14th day of February instant, respectfully represents:

1st. From the transcript of the record of the Supreme Court of the United States filed as proof in this cause, the debt and damages
812 awarded in favor of complainants by the judgment of this court rendered on the 25th day of May, 1860, amounted to the sum of twelve thousand one hundred and fifty-five dollars and forty-eight cents,

on which it was then ordered by the court that the defendant Christmas should be entitled to the entry of a credit of "two hundred dollars, with interest from March 1st, 1841."

Under which order the said debt and damages would be reduced to the sum of eleven thousand seven hundred and twenty-three dollars and sixty-four cents.....	$11,723 64
Interest at 6% thereon to 15th Feb'y, 1870, being for 9 years 8 mos. and 20 days.....	6,838 76
	$18,562 40

say eighteen thousand five hundred and sixty-two dollars and forty cents now due on complainants' judgment at law against Richard Christmas, with $210 30 costs in the Supreme Court of the United States thereon, making in the aggregate the sum of eighteen thousand seven hundred and seventy-two dollars and 70 cents due complainants from Richard Christmas on said judgment.

2d. The judgment in favor of Harry H. Christmas in this court, rendered on the 13th day of November, 1868, against Willie Lyons,
813 was for the sum of $8,868 10, with 8% per annum interest from that date. On the 15th July, 1869, there was paid into court to the clerk, in currency, the sum of nine thousand three hundred and forty-one dollars and eight cents, which at that date appeared to be the full amount of the plaintiffs' money and interest thereon to that date, according to the said judgment as rendered. On the following day, July 16th, 1869, by an order entered of record in this court in this cause, of H. H. Christmas et al vs. Willie Lyons et al., N. S. 46, (Minute Book 1,256 and 257,) it was recited by consent of the parties that this judgment at law was erroneously calculated, and that, after deducting said payment into court, there was still due from said Willie Lyons on the note upon which said judgment was rendered, the sum of $815 92, with 8 per cent. per annum interest thereon from the 13th day of July, A. D. 1869, which amount was by said order required to be paid into court on or before the 1st day of September, 1869, but such payment has not been made. Your commissioner therefore reports that on the judgment of Harry H. Christmas against said Lyons, rendered on the 13th day of November, 1868, there remains due of principal the sum of $815 92,
814 and interest to this date $38 07; total on judgment, eight hundred and fifty-three $\frac{99}{100}$ dollars. Out of the sum of $9,341 08 paid into court on the above-recited judgment, there has been paid by the clerk to John D. Freeman, esq., the sum of eleven hundred and sixty-seven $\frac{46}{100}$ dollars, under the order of this court, on the 22d July, 1869, in part of the sum of $1,834 92 then claimed by him to be due to him as counsel fees due him in the litigation in this court by Harry H. and Mary E. Christmas touching the funds involved in this cause. There was also paid by the clerk to Geo. L. Potter, esq., the sum of $300, under the order of this court made in this cause on the 15th day of November, A. D. 1869.

Of the sum of $1,834 92, claimed as aforesaid to be due to John D. Freeman, esq., as counsel, there yet remains unpaid to him the sum of $667 46.

3rd. There is due—

On the judgment of H. H. Christmas, for the use of Mary E. Christmas, against Willie Lyons, rendered on the 21st May, 1869, the sum of.....	$8,192 24
And interest thereon to date, of 5 per ct. per annum.....	300 55
	$8,492 79

815 A total, eight thousand four hundred and ninety-two $\frac{79}{100}$ dollars.

Your commissioner therefore reports said judgments as follows:

1st. Due on judgment 13th Nov'r, 1868	$853 99
2nd. Due on judgment 21 May, 1869, to date	8,492 79
Total due from Lyon 15 Feb., 1870	9,346 78
Say, nine thousand three hundred and forty-six $\frac{78}{100}$ dollars.	
Amount paid John D. Freeman, esq.,	$1,167 46
Do. do. Geo. L. Potter, esqr	300 00
Total paid out by clerk	$1,467 46

as per receipts in possession of the clerk, leaving in the hands of the clerk, at this date, of the sum received by him the sum of seven thousand eight hundred and seventy-three dollars and *and* 62 cents, of which he prays an allowance of commissions for receiving the same.

Your commissioner prays allowance of a proper fee for this report, to be adjusted by the court.

All which is respectfully submitted.

February 15th, 1870.

GEO. T. SWANN,
Clk and Comm'r.

Filed Feb'y 15th, 1870.

G. T. SWANN, *Clk.*

816 And on Tuesday, the 15th day of February, 1870, the same being another day in said special term of said circuit court of the United States for the fifth circuit and southern district of Misisissippi, begun and held as set forth in the caption hereof, the following order was made and entered upon the minutes of said court in this cause, to wit:

WM A. GAINES AND HENRY S. JULIAN, EX'ORS, &c., et al.,
vs.
WILLIE LYONS ET AL.
} N. S., 86.—In chancery.

On motion of complainants, by their solicitors, it is ordered that Geo. T. Swann, clerk of this court, be allowed the sum of ninety-three dollars and forty-one cents, being one per cent. commissions on the sum of $9,341 08, heretofore received by him in this cause; and the sum of ten dollars for his report on the interlocutory reference to him in this cause filed this day. Said commissions and fee to be taxed in the bill of costs.

And now, afterwards, to wit, on the 16th day of February, A. D. 1870, the same being also a day of said special term of said circuit court of the United States for the fifth circuit and southern district of Mississippi, begun and held at Jackson, in said State of Mississippi, on
817 the fourth Monday, and 24th day of January, 1870, as stated and set forth in the caption hereof, the following final decree was rendered by said court in this cause, and enrolled upon the minutes thereof, to wit:

WILLIAM A. GAINES AND HENRY S. JULIAN, executors, and others, *vs.* WILLIE LYONS AND OTHERS. } N. S., 86.—In chancery.

Be it remembered that this cause coming on to be heard and finally determined on the original and amended bills of the complainants, the answers, exhibits, and proofs in the cause, and the report of G. T. Swann, commissioner in this cause, who was directed to compute the amount due the complainants for principal, interest, and costs of their judgment against the defendant Richard Christmas, as set forth in the original bill, as also the amount due on the judgments against the defendant Wiley Lyons, as set forth in the said bill, which report is hereby in all things confirmed:

And it appearing to the satisfaction of the court that on the 25th of May, 1860, John W. Russell, for the use of himself and the other complainants in the original bill, recovered a judgment against the
818 defendant Richard Christmas for the sum of $11,723 76 *dollars*, with interest from that date, at six per centum per annum until paid, together with costs; and that on a writ of error prosecuted by said Richard Christmas to the Supreme Court of the United States, the said judgment was duly affirmed, and judgment rendered in that court for the sum of $210 30 *dollars* for costs; and that there is due at the date of said report to the complainants on account of said judgment and costs the sum of $18,772 70 *dollars:*

And it also appearing to the satisfaction of this court that on the said 25th day of May, 1860, the said Richard Christmas executed his writ of error bond, payable to the said John W. Russell for his own and the use aforesaid, in the penalty of 24,400 dollars, with the defendant William Yerger, and Warren P. Anderson, deceased, as his sureties, conditioned for the prosecution of the writ of error aforesaid with effect, and in default thereof to pay and satisfy said judgment, and all interest, damages, and cost as should be adjudged therein:

And it further appearing that the said Richard Christmas, with the intent to provide for the payment of said judgment in case the same should be affirmed, and to induce the said William Yerger and
819 Warren P. Anderson to become his sureties as aforesaid, did agree to provide special indemnity to them; and with such intent, and to the end that said judgment should be paid, and his said sureties held harmless, did assign to them, his said sureties, the debt mentioned in the complainants' bill as due from the defendant Wiley Lyons to him, the said Richard Christmas, to be by them devoted to the payment of the said judgment, interest, and costs, in case the same should be thereafter affirmed as aforesaid; and did so assign and set apart said debt to the sureties aforesaid, for the purpose aforesaid, as to give to the said William Yerger, and the said Fulton Anderson, administrator of said Warren P. Anderson, a lien upon said debt, which, in equity, they are entitled to enforce, for the purpose of paying said judgment of the complainants, to the end that they be indemnified; and that their said lien attaches to and binds the debt due from said Lyons as aforesaid, and not converted by said Harry H. and Richard Christmas, and which debt is evidenced by the judgments recovered in this court in favor of H. H. Christmas, and of H. H. Christmas for the use of Mary E. Christmas, and by a decree in this court against said Lyons in favor of said
820 H. H. Christmas and Mary E. Christmas, foreclosing a mortgage and ordering a sale of the property included in said mortgage

executed by said Lyons to secure the payment of said debt due by him as aforesaid:

And it further appearing that said judgment against Richard Christmas has been affirmed; and that the same remains wholly due and unpaid; and that said Richard Christmas has been declared a bankrupt; and that the complainants in equity should be substituted to the rights of the said William Yerger, and Fulton Anderson, adm'r, &c., in respect to the lien upon the fund still due from said Lyons, as also upon the sum paid by him into court on the judgment rendered in favor of Harry H. Christmas against him, on the 13th day of November, in the year 1868, and which fund so paid into court amounted to the sum of $9,341 08, leaving still due and unpaid by said Lyons on said judgment $815 92, with interest at 8 per cent. from 13th July, 1869, and also the judgment rendered against him in favor of H. H. Christmas for the use of Mary E. Christmas on the 21st day of May, in the year 1869, for the sum of $8,192 24, together with interest and cost thereon:

The court therefore orders and adjudges and decrees that
821 there shall be paid forthwith by the clerk of this court to the complainants the sum of money so paid into court by said Lyons, and now in the custody of said clerk, less the amount heretofore paid by order of this court to John D. Freeman and George L. Potter for fees in collecting said fund, and less the costs of suit not taxed to the said Lyons, and which sum of money remaining in the hands of said clerk, after deducting the payments made by him to this date, amounts to $7,873 62, and which amount, when so paid to the complainants, shall be credited and applied as a payment on the judgment rendered, as aforesaid, against said Richard Christmas, on the 25th day of May, in the year 1860.

The court further orders, adjudges, and decrees that the said complainants shall recover of the said Lyons, and that the said Lyons shall pay to them, the balance due and owing by him as aforesaid, being the sum of $8,192 24, with interest thereon at the rate of 5 per cent. per annum from the 21st day of May, in the year 1869, the date of the judgment against said Lyon in favor of H. H. Christmas for the use of Mary E. Christmas, and which sum, when so paid by said Lyons to complainants, shall be applied as a credit and payment on the judgment
822 rendered on 25th day of May, 1860, against said Richard Christmas.

The court further orders, adjudges, and decrees that the complainants shall have the right, and they are hereby authorized and empowered, to control, direct, collect, manage, and enforce, by execution or by suit or otherwise, the judgments and decrees heretofore rendered in this court against said Lyon, in favor of H. H. Christmas for the use of Mary E. Christmas, and of H. H. Christmas, or in favor of both or either, the said H. H. Christmas and Mary E. Christmas, and which judgments and decrees were founded upon the debt due by said Lyons to Richard Christmas, and assigned by him as aforesaid to the said William Yerger and Warren P. Anderson as his sureties on the writ of error bond aforesaid, and the benefit of all liens and proceedings and remedies whatever existing for the enforcement of said judgments and decrees against said Lyons shall inure to and belong to said complainants, and whatever sum of money may at any time be collected or realized by complainants upon said judgments and decrees shall be by complainants applied as a credit and payment on the judgment rendered against said Richard Christmas on the 25th day of May, 1860, as aforesaid.

823 And the court orders, adjudges, and decrees that the complain-

ants be substituted to all the rights of William Yerger, and of Fulton Anderson, adm'r, &c., of Warren P. Anderson, dec'd, in respect of the said fund and debt of Willie Lyons, assigned, as aforesaid, by said Richard Christmas; and that the judgments and decrees aforesaid, rendered *rendered* in this court against said Lyons in favor of Mary E. and H. H. Christmas, or either of them, or for their use, mentioned in the pleadings in this cause, be prosecuted and held for the benefit of complainants; and that the injunctions, heretofore granted against said H. H., and Mary E., and Richard Christmas, be, and the same are hereby, made perpetual; and that all sums heretofore paid by said Lyons into court on account of said judgments and decrees, and also all sums that may be hereafter paid by, or that may be collected from, said Lyons, on account of said judgment and decrees, after deducting expenses and costs of collection not taxed to said Lyons, shall be paid to complainants on the judgment aforesaid against said Richard Christmas, and the costs due thereon, first paying out of said money the costs of this cause, to be taxed.

824 Ordered, adjudged, and decreed this 16th day of February, 1870.

And on the 16th day of February, 1870, at the term of said court begun and held as aforesaid, the following order of appeal was made by said court, and entered upon the minutes thereof, as follows, to wit:

WILLIAM A. GAINES ET AL.
vs.
WILLIE LYONS ET ALS. } N. S., 86.—In chancery.

And the said defendants H. H., Mary E., and Richard Christmas, feeling themselves agrieved by the said decree in favor of complainants herein, prayed an appeal therefrom, to operate as a supersedeas, to the next term of the Supreme Court of the United States, and supersedeas is by the court hereby granted.

And it further appearing that the fund in controversy, and disposed of by this decree, will remain in the control of the court, and at interest for the use of the parties interested pending this appeal, it is further ordered that said appellants give bond and security in the penalty of two thousand dollars.

And thereupon said appellants tendered their said appeal bond, with Wirt Adams and Ben Hardaway as their sureties, which
825 said bond is accepted and approved, and said appeal and supersedeas made final.

Appeal bond.

UNITED STATES OF AMERICA,
Circuit Court of the U. S., 5th Circuit,
Southern District of Mississippi:

Know all men by these presents that we, Harry H. Christmas, Mary E. Christmas, and Richard Christmas, Wirt Adams and Ben Hardaway, are held and firmly bound unto the executors of Jno. W. Russell, Philip Swigert, E. H. Watson, and others, in the sum of two thousand dollars, to be paid to the said executors of said Russell, Philip Swigert, E. H. Watson, and others, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us,

jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Whereas the above-named H. H., Mary E., and R. Christmas hath prayed and obtained an appeal to the Supreme Court of the United States, to reverse the decree of the said circuit court of the U. S. for the fifth circuit and southern district of Mississippi, rendered against
826 them at the present term of this court in the above-entitled suit in equity:

Now, therefore, the condition of this obligation is such, that the above-named H. H., M. E., and R. Christmas shall prosecute their said appeal with effect, and answer all damages and costs if they fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. H. CHRISTMAS, [SEAL.]
By R. CHRISTMAS, *his Agent.*
MARY E. CHRISTMAS, [SEAL.]
By R. CHRISTMAS, *her Agent.*
R. CHRISTMAS. [SEAL.]
WIRT ADAMS. [SEAL.]
BEN HARDAWAY. [SEAL.]

Sealed and delivered in presence of—

LAZ. LINDSAY,
U. S. Com'r.

The above bond is satisfactory to the complainants and defendants.

LAZ. LINDSAY,
U. S. Com'r.
JOHN D. FREEMAN,
Sol. for Def'ts.

Filed February 16, 1870.

GEO. T. SWANN, *Clk.*

827 UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

I, George T. Swann, clerk of the circuit court of the United States for said district, hereby certify that the foregoing and annexed eight hundred & twenty-six pages contain a full, true, and complete transcript of the record of the proceedings, process, and final decree in said court between the parties therein named, with the appeal therefrom, together with a true and correct copy of the appeal bond filed and approved therein, as the same remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Jackson, in said district, this 13th day of September, A. D. 1870, and in the 95th year of the independence of the United States of America.

[SEAL.] GEO. T. SWANN, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

(Indorsement on cover:) No. 501. Harry H. Christmas, Mary E. Christmas, and Richard Christmas, appellants, vs. W'm A. Gaines & H. S. Julian, ex'ors of John W. Russell, dec'd, Philip Swigert, E. H. Watson, et al. S. Mississippi C. C. U. S.
Filed 25th October, 1870.

Supreme Court of the United States.

DECEMBER TERM, 1870.

H. H. CHRISTMAS *et al.*
vs.
GAINES, JULIAN *et al.*

STATEMENT.

Richard Christmas, on 30th November, 1859, sold to Wylie Lyons a certain estate in the State of Mississippi, and received in consideration therefor his three promissory notes, each for $16,666 60, made payable to said Richard or bearer, with eight per cent. interest, in one, two, and three years, with a mortgage on the estate.

These notes subsequently passed into the hands of H. H. Christmas, the son of Richard by his first wife, who, in June, 1866, had a settlement and compromise with said Lyons, who paid a certain sum in cash, and for the remainder executed his two promissory notes in favor of said H. H., for $8,339 90 each, one payable December 1, 1866, and the other February 1, 1868; and these notes were to be secured by the mortgage aforesaid.

H. H. C., being indebted to the firm of Payne, Huntington & Co., of New Orleans, for supplies to carry on his plantation, pledged to them, in February, 1867, the first of these notes, it being then in the hands of John D. Freeman, his attorney, who was immediately notified by P., H. & Co. of the transfer. Until this notice could be given, H. H. left with P., H. & Co. the second note of Lyons, as collateral security, which was subsequently redelivered to H. H.

Two suits were instituted on these notes, in the circuit court of the United States, at Jackson, Mississippi; one in the name of H. H., for the use of Payne, Huntington & Co., on the pledge above stated, and the other in the name of H. H., for his own use.

A bill was also filed to foreclose the mortgage on these notes, on which these respective rights were asserted.

On the 1st May, 1868, H. H. entered into a written obligation with Mary E., the second wife of said Richard; in which, in consideration of her assuming to pay the debt due to P., H. & Co., he transfers to her the note of Lyons, left in pledge with them.

The bill to foreclose the mortgage was then amended, by showing this transfer and the payment of the amount due to P., H. & Co., and application was also made to substitute her name for that of P., H. & Co., on the action at law. On the second of these notes a judgment was rendered on 13th November, 1868, for $8,868.

The payment to P., H. & Co. was made by a sale of real estate belonging to Mary E., and which had been devised to her by her father many years before her marriage. The sale was made to Hahn & Harris, by Richard, under a power of attorney executed by his wife, and the deed was executed by him, as trustee for his said wife, in June, 1868. The purchasers gave their draft to Richard, as trustee, at four months, for $4,2[illegible]0, as the consideration of the purchase, and this was immediately taken to the Bank of Louisville, where it was discounted by Tilden, the cashier, and the money passed to the credit of Richard, as trustee aforesaid. A check for the amount was then drawn by Richard as trustee, which was given to Brannin & Sumers, of Louisville, who drew the money thereon, and who immediately telegraphed their firm in New Orleans to pay the amount due by H. & H. to P., H. & Co., and take up the note, which was done accordingly. (See depositions of Hahn, Christmas, Tilden, Brannin, and Bodley, 294–307.)

The bill of complaint in this case was filed on the 6th August, 1869, and seeks to enjoin the collection of the

money on the suits heretofore described, and to subject the payment, when realized, to be made to complainants, on the grounds—

That they had recovered a judgment against said Richard on 25 May, 1860, for $5,634, and $6,521 damages; that this judgment had been stayed by a supersedeas bond, executed by said Richard, and William Yerger and W. P Anderson as his sureties; that the said Richard had made an equitable assignment of one or all of the three original notes of Lyons to Richard; and that as the judgment was subsequently affirmed by the Supreme Court in 1866, and has not been satisfied, Richard being insolvent, they are in equity entitled to enforce the security as an indemnity made by Richard to his sureties on the bond.

The equitable assignment is rested upon the effect of a certain correspondence, which will be subsequently referred to. We now refer to the claim as set up by the allegations of the bill.

It avers, that while the writ of error was pending in this court, Richard being then in England, his attention was drawn to the loss likely to fall on his sureties, and that a correspondence ensued between himself and Mr. Yerger touching an indemnity, "in the course of which he stated that he held *a* note on Wylie Lyons, (dated, as appears, about 30 November, 1859) for $16,666 60, secured by special mortgage on the land, bearing interest at 8 per cent., and that the note was in the hands of a friend in New York by name of Breman; and with a view to indemnify the said Yerger and estate of W. P. Anderson, he assigned and pledged *the said note* to said Yerger for the payment of the debt of the complainant, and to save harmless the said Yerger and estate of said Anderson." (p. 2.)

The bill then refers to the letters written in the fall of 1865 and the winter and spring of 1866.

On the 23 November, 1869, an amended bill was filed, based on the information stated in the answer of Richard, showing that at the time the bond was executed Richard had given a certain specific security, which the bill alleges[t]

had been given up at the request of Richard and on his promise to furnish other indemnity. It then avers that, after this special security had been surrendered, "the said Christmas, having sold a tract of land to the defendant Lyons and obtained his notes for the purchase money, indicated *one* of the said notes, or *the notes collectively*, as the indemnity aforesaid, and promised to hold the same in trust for that purpose." (p. 85.)

The court decreed for complainants, "it appearing that the said Richard, with intent to provide for the payment of said judgment, in case the same should be affirmed, and to induce the said William Yerger and Warren P. Anderson to become his sureties aforesaid, did agree to provide special indemnity to them; and with such intent, and to the end that said judgment should be paid, and his said sureties saved harmless, did *assign to them*, his said sureties, *the debt mentioned in the complainants' bill, as due from the* defendant, Lyons, to him, the said Richard;" "and did so assign and set apart *the said debt* to the sureties aforesaid, as to give them a lien upon the said debt, which in equity they are entitled to enforce for the purpose of paying the said judgment, and that their lien attaches to and binds the debt due from Lyons, and not converted by said Harry and Richard, and which debt is evidenced by the judgments recovered in this court in favor of H. H. Christmas, and of H. H. Christmas for the use of Mary E. Christmas, and by a decree in this court against Lyons in favor of said H. H. Christmas and Mary E. Christmas, foreclosing the mortgage, executed by said Lyons, to secure the payment of said debt due by him as aforesaid." (322.)

The court then decrees the payment to complainants of the fund in court, which had been paid by Lyons, $7,873 62, and that the said Lyons pay to them $8,192 24, with interest from the 21 May, 1869.

It is apparent that the only defendants interested in the reversal decree are H. H. Christmas and Mary E. Richard had assigned all his interest in the notes. Yerger and

Anderson are really complainants, though nominally defendants, and Lyons is but a stakeholder.

The errors we assign are—

First. The court had no jurisdiction over the defendants, Richard, Harry H., and Mary E., who are stated in the bill itself to be citizens of Kentucky.

Second. The evidence does not authorize the conclusion that there had been any equitable assignment.

Third. If there had been, there was no such notice as would prevent persons dealing *bona fide* with Richard, who never parted with the possession of the notes, acquiring an interest therein. The evidence shows that Harry H. was *bona fide* transferee for valuable consideration.

Fourth. If Harry H. was only a colorable holder of the notes, there is no evidence to show that Mary E. was not a *bona fide* purchaser of the note transferred to her, and which was redeemed out of the hands of Payne, Huntington & Co., with her money.

AS TO JURISDICTION.

The complainants are citizens of Kentucky, and Richard, H. H., and Mary E., the only real defendants, are stated to be citizens of the same State. The controversy between these parties arises out of the question, whether Richard had made to complainants, or to others for their benefit, an equitable assignment of the three original notes given by Lyons to Richard on the purchase of a certain real estate. That controversy is for the first time brought to the notice of the court by the bill filed in this case.

The Constitution declares that the judicial power shall extend to "*controversies between citizens of different States.*" The exception to this is, where *citizens of the same State claim lands under grants of different States.*

No act of Congress would have any validity to confer jurisdiction in any other cases between citizens of the same State, and no consent or admissions of parties could authorize the court to exercise such a jurisdiction.

The bill was an original bill, as it related to matters not

before litigated in the court by the same persons, standing in the same interest. (Story Eq., § 16.)

Bills not original are those which relate to some matter already litigated in the court by the same persons, and which are either in addition to, or a continuance of, an original suit. (Cooper's Plead., p. 43.)

The matter of the equitable assignment was never litigated before in the court, nor is the bill an addition to, or a continuance of, an original suit. It is therefore an original bill.

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There was also a suit in equity to foreclose the mortgage, in which all these defendants are named as complainants.

The right set up in the bill is not to set aside these suits or prevent the collection of the money on the judgments thereon, but merely to subject the money when collected to the lien asserted. That lien constituted the new controversy, which had to be first determined before the funds could be subjected, and in which Lyons, the defendant, is and was in nowise concerned. The present complainants were not parties to these suits, and appear for the first time in the filing of the bill.

If no act of Congress and no act of the parties could give the court in Mississippi jurisdiction in a controversy between citizens of Kentucky, the decree must be reversed.

The case, put in the strongest light for complainants, is this: A., a citizen of Kentucky, holds a note, payable to bearer, against B., a citizen of Mississippi. On this an action is brought in the circuit court of Mississippi. While there pending, C., another citizen of Kentucky, files his bill in that court, asserting an equity to the note or its proceeds, by virtue of some contract that he had with A. But the court

cannot decree on this contract without compelling A. to become a party to this litigation; and, if this is accomplished, then the court will be in the predicament of entertaining jurisdiction in Mississippi, in a controversy between citizens of the same State.

The cases where the question of jurisdiction has been raised are as follows:

In Logan v. *Patrick*, 5 *Cr.*, 288:

The judges in Kentucky certified their decision whether they had jurisdiction in equity, to stay the proceedings on a judgment at law, *between the same parties*, the defendant having been served with subpœna *out of the district*, and where the defendant had answered without making the objection. This was answered in the affirmative.

Sims v. *Gutherie*, 9 *Cr.*, 25:

This was also a bill to enjoin a judgment between the same parties. The court say: "Regularly claimants, who have an equitable title, should make those whose title they assert, as well as the persons from whom they claim a conveyance, parties to the suit; and, for omitting to do so, an original bill will be dismissed. But this is a bill to enjoin a judgment at law, rendered for the defendant in equity against the plaintiffs. The bill must be brought in the court of the United States, the judgment having been rendered in that court. Its limited jurisdiction might possibly create some doubts of the propriety of making citizens of the same State with the plaintiff parties defendants. In such a case the court may dispense with parties who would otherwise be required, and decree as between those before the court, since its decree cannot affect those who are not parties to the suit."

Dunn v. *Clark*, 8 *Pet.*, 1:

Graham, a citizen of Virginia, obtained a judgment in the Ohio circuit court in an action of ejectment against the complainants, who filed the bill to enjoin it died, and Dunn, a citizen of Ohio, held the

before litigated in the court by the same persons, standing in the same interest. (Story Eq., § 16.)

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under Graham's will. So that complainants and defendant were all citizens of Ohio.

The court held that Dunn was the representative of Graham; and, although a citizen of Ohio, this would not deprive the court of an equitable control over the judgment. But beyond this the decree of the court could not extend. Of the action at law the circuit court had jurisdiction, and no change in the residence or condition of the parties can take away a jurisdiction which has once attached. The injunction bill is not considered as an original bill between the same parties, as at law; but, if other parties are made in the bill, and different interests involved, it must be considered to that extent an original bill.

Clark v. *Matthewson*, 12 *Pet.*, 170:

An original bill filed in the circuit court of Rhode Island by Wetmore, a citizen of Connecticut, *v.* Matthewson *et al.*, citizens of Rhode Island, for an account. Pending the reference to the master, Wetmore died, and Clark, a citizen of Rhode Island, became his administrator, and filed a bill of revivor. The question was, whether this was an original bill, and so without the jurisdiction. The affirmation was strongly pressed by Mr. Webster, who maintained that, under the Constitution, the jurisdiction could not be maintained. The court below had dismissed the bill on the ground that it was a suit between citizens of the same State; but the Supreme Court reversed the decree, holding that the revivor was in no just sense an original suit; that the parties to the original suit were citizens of different States; and that, the jurisdiction having attached, it could not be divested by subsequent events.

This decision was delivered by Story, J., who had decided the case on the circuit, and who acknowledged that he had been in error. But this shows how strictly the constitutional grant is adhered to, when so eminent a jurist could have been led to the conclusion that a mere review of a suit, which was properly before the court, could have the effect of ousting the jurisdiction.

Jones v. *Andrews*, 11 *Wall.*, 331:

Andrews, a citizen of New York, had issued a ~~commit-~~ garnish ment process against Jones, whereupon Jones, a citizen of Georgia, filed his bill against Andrews and Bryson & Reed, citizens of Tennessee. The court held that the jurisdiction could not be sustained under the act of 1789, but it might be under the act of 1839, as they were all citizens of different States, provided that Andrews had voluntarily appeared. This was said in reference to the bill, if it were to be regarded as an original bill. But the court held that it was not to be regarded as an original, but as a "defensive or supplementary suit," and the court refers to the cases cited above.

In all these cases it will be seen that, when the bill was sustained irrespective of citizenship, the litigation was but a continuance of the controversy in the original suits at law, and between the same parties.

The only other decision of this court is that of *Freeman* v. *Howe et al.*, (24 *How.*, 460.)

In this case the question under consideration did not directly arise, nor is it even remotely referred to in the argument.

This case was on writ of error, under 25 section of the judiciary act, directed to the supreme court of Massachusetts. The case was this: White, a citizen of New York, instituted a suit in the district court of Massachusetts, against the V. & M. R. R. Co., a corporation of Massachusetts. It was commenced in the usual way, by process of attachment. Freeman, the marshal, levied a number of R. R. cars. While they were in his custody they were taken from his possession by the sheriff of the county, under a writ of replevin, instituted by Howe *et al.* in the State court, who were mortgagees of the V. & M. R. R. Co., against Freeman, the marshal. Freeman set up his defence under the attachment aforesaid, and this was overruled, and judgment rendered in favor of Howe *et al.* It was on this judgment the writ of error was sued out. This

judgment was reversed, on the ground that the district court had obtained jurisdiction of the cause, and that this could not be interfered with by the State court.

In the concluding part of the opinion it is indicated that the proper remedy of Howe *et al.*, as mortgagee, would have been to file a bill in the district court to enjoin the proceedings, as such a bill would not have been an original, but ancillary or supplemental to the original suit. And the court, ~~remarking on~~ the case of *Dunn* v. *Clark*, (8 *Pet.*,) says that as this was among the first that came before the court, it deserves a word of explanation: "It would seem, from a remark in the opinion, that the power of the court upon the bill was limited to a case between the original parties to the suit. This was probably not intended, as *any party may file a bill whose interests are affected by the suit at law.*"

This advice to counsel we regard as a mere dictum, unsupported by the two cases to which it refers, to wit: *Pennock* v. *Coe* and *Guy* v. *Tide-water Canal.* The former case is reported in 23 How., 117. It does not appear from the report what was the character of the citizenship of the complainants. Nothing was said in argument as to the question, and not the remotest allusion to it in the opinion. The latter case is reported in 24 How., 262. Here Guy had recovered a judgment against the Tide-water Canal Company in the circuit court for district of Maryland, and the bill was filed by the company, the defendant in the suit at law, and therefore falls within the recognized principle. But in this case, though well sustained, was anything said, either in the argument or the opinion, as to the subject under consideration?

In *Dunlap* v. *Stetson*, (4 *Mas.*, 349,) Judge Story sustained the bill enjoining the judgmeut, though the defendant to the bill had been served in another district. But the parties to the bill were the parties to the judgment.

The act of 1789 provides, that "no civil suit shall be brought against an inhabitant of the United States by any

original process in any other district than that whereof he is an inhabitant."

This prohibition is held not to include a bill filed by the defendant in a judgment against a plaintiff in that judgment.

The judge says: "These are not original suits, but *branches growing out of the original suits, and dependent upon them*, and very much in their nature like those hearings in equity, authorized by our laws in cases of the confession of forfeiture, upon the penalties of bonds, mortgages, and other agreements with collateral conditions." (p. 361.)

Second. There was no equitable assignment that a court of chancery could enforce.

Richard held three notes, payable in one, two, and three years. The bill claims that the assignment was of "one *or* all of the three notes." It then refers to the correspondence to evidence the assignment, and states that this shows that he held "a note on Wyley Lyons" for the indemnity of the sureties. In the amended bill, the same uncertainty is continued. The averment being that Richard "indicated *one* of the said notes, *or the notes collectively.*"

Yerger, with whom the correspondence was had, ~~deposes~~, in answer to the 4th cross-interrogatory: Whether he means to assert that any particular note was assigned to him? says, that the letters of Richard ~~to~~ assign to him "a note," "I cannot specify which of the three notes Richard referred to in his letters, as held for my indemnity—it was one of the three. I never claimed any particular note. As one of them was designed for my indemnity, and all three went into the hands of H. H. C., I insist that I am entitled to *one third of the proceeds that has been or may be realized on the three.*" (107, 109.)

Mr. Yerger himself, it is seen, confines the assignment to one note, but which of the three was assigned he knows not.

These three notes were given up to Lyons on a settlement with H. H. C. One of these notes had on it a credit for $12,000, an amount paid by Lyons in extinguishing a

judgment lien on the property purchased by him. (p. 95.)

The amount paid on the compromise was $35,000—a certain sum in cash, the assumption of debt for another portion, and the remainder in the two notes for $8,330 90 each, the subject of the two suits enjoined.

These notes are for nearly the one-half of the compromise, and their payment has been decreed to complainant, though Yerger himself claimed but the one-third of the compromise.

We have seen how uncertain is the bill itself as to the thing said to be assigned: it was one or all collectively. This difficulty is tided over by the decree, which states, that it appears that Richard did assign to his sureties "the *debt* mentioned in complainants' bill;" and did so assign it as to give the sureties "a lien on *said debt*, which in equity they are entitled to enforce."

Whether the court considered that one note was assigned, or all the notes remaining in the uncertain condition created by the averments of the bill.

The letters relied on to prove the assignment are as follows:

"LIVERPOOL, 23 *October*, 1865.

"I feel great uneasiness about your liability on the bond in the suit of Russell against me. I have not heard a word since the suit has been taken up. I presume it will be decided against me, as a matter of course, and how to pay it is a mystery. I am willing to give you all I have to pay it; but this all is worthless, I am afraid. I have ever held the Lyon note as sacred for the payment of this debt, and have it now in New York, endeavoring to sell it with the mortgage to pay this debt. If not sold, I will send it to as soon as I return, which must be soon, &c." (22.)

"LIVERPOOL, 14 *February*, 1866.

"I am in receipt of yours of 12 January; yours directed to Louisville, Kentucky, I have not received. Hence, have not some information requested in my first letters. I am willing to make a liberal arrangement with Mr. Lyons.

Having been absent from the country for three years, I know but little of the situation of the people or country; and you do not give me any insight into Mr. Lyons' situation or the property I sold to him. The value of the land it would be necessary for me to know, and if cultivated at this time. The note, I am sure, is not sold, and to-day I countermanded its sale at any price."

"I could not safely send Lyons' note by mail, as it is payable to me or bearer, hence if lost might put me to much trouble." "Ask Lyons for a proposition." (23–4.)

LIVERPOOL, 20 *July*, 1866.

"I wrote you on the 17 inst., in which I proposed that Lyons might take up the Russell judgment, and I would give him credit on his note dollar for dollar. On mature reflection I think I may be doing wrong, as I have no knowledge of the judgment being confirmed at Washington. I must therefore decline having anything done in the premises until I learn further the situation of the claim, and also the situation of Lyons, and of the property I sold him on which I have a mortgage. If he is cultivating or renting it, the property is worth all the balance due on the mortgage. The rents alone would soon, or in one year, pay the amount you are surety for me. On these points you should have informed me. I will hold this note $16,666 60, and many years interest at 8 per cent., always subject to this debt, provided the judgment is confirmed, until which let the matter rest as it is. I will return in April or May and write you from Kentucky. Whenever a compromise is to be offered, it should be through you as surety, knowing that they will relie on your future prospects, as a lawyer, to make money and pay it. I am sorry you told Lyons of our understanding, as he will be apt to let Russell know, or his attorney, the arrangement, and in that way defeat us in making an advantageous compromise."

LIVERPOOL, 21 *February*, 1866.

"I wrote you on the 17 and 20 inst., since which I have received some information which causes me to countermand

my proposition for Lyons to take up my debt, or exchange dollar for dollar in his paper. I have to-day written Burwell, who I learn through my son is at Vicksburg, to propose a compromise with Russell, which I presume he will effect. You may rest assured I will procect you with Lyons' note of $16,666 60, which is now over $20,000. This fact should not be known, to enable me to make a favorable arrangement. My son is now in Mississippi, and has possession of his plantation, and is cultivating or renting the same with Burwell and Manlove. I will be over in May, or as soon as the storms are over. Say nothing to Lyons; to do so would embarrass my intentions." (25.)

LOUISVILLE, KY., 12 *May*, 1866.

"On my arrival here, I found the notes of Lyons under attachment. I left them in New York, as I supposed, in the hands of a friend, O. A. Brannin, an honorable man, to whom I never owed a cent, to sell for cash. In this I was mistaken; he managed to find out some indebtedness, and get it transferred to him, thereby compelling me to transfer some $9,000 of this debt to him and others. I transferred the balance to my son, H. H. Christmas, to whom you are aware I owed a large trust debt for property sold, uses, and rents, given him by H. R. W. Hill in his lifetime. In doing so, I believe I have not lost sight of my purpose of protecting you from final loss. It shall be done, and I will try and satisfy you of this fact. I am now located at this place; should be pleased to hear from you; and as to the condition of my old suit, brother's heirs, which shall expect you to give particular attention to, and oblige your friend." (25.)

"LOUISVILLE, *July* 5, 1866.

"I wrote you some two weeks since, and to-day find my — retained in the post office, having put a revenue stamp on it instead of postage stamp. In reply to your rather complaining letter I replied, and I again say, I have not lost sight of my obligations to you and Anderson, and have my plans of protection, though I learn by Mr. Martin that

the estate is insolvent, and that he had lost $20,000 by it; but this does not lessen my obligations. I think in the meantime you should do all in your power to prevent my making sacrifices. The suit of Russell will not be heard until the 1st December, before which much might be done to ward off the blow, and enable me to compromise, which I am now endeavoring to do. I find you do not mention my suit in Issequana, (brother's heirs,) and was not there at the last term of the court. And now allow me to complain a little, as you have never given this important suit the least attention, though I have paid $2,000 in advance. This suit might now be brought to a favorable termination for me, if I could but get your attention. Tell me, shall I have it or not? Have you examined if all the papers are saved? I learn from Mr. Burwell that he was at court; but he, who I have also paid, says nothing about it. Hoping soon to hear from you." (26.)

"LOUISVILLE, *September* 28, 1866.

"I wrote you some months since respecting my suit, (brother's heirs,) in Issequana county, but as yet have received no reply. The fall term being near at hand, it will be necessary to have some representative present. I wrote to know if you would attend. The Russell suit is set for trial at Washington, 1st December. I have the matter under consideration for compromise. Were there but one plaintiff, it could be settled, it appears; but unfortunately there are several. This debt will be ——, last of your indebtedness paid. I learn Anderson's estate is insolvent. I think all are South. Let me hear from you, and oblige yours, truly." (26.)

These letters are attached as exhibits to the bill, and constitute the sole ground of the claim made on it. They are copied into the brief, because their mere perusal is a demonstration, that Richard never intended and did not ever part with his dominion and control over these notes, by any assignment of either or all of them to Yerger and Anderson. On the contrary, they show, from first to last,

that he continued to hold and exercise ownership over them, and that his letters amount to a mere promise that he would use them, by sale or otherwise, and out of the proceeds he would save them from ultimate liability.

To complete the evidence as to this correspondence, we append Mr. Yerger's letter:

"JACKSON, *March* 20, 1866.

"R. CHRISTMAS, Esq., *Liverpool.*

"DEAR SIR: A few days ago I received three letters from you, dated February 14, 17, 21. Of course I will do nothing in the business with Lyons without your directions. I hope you may be able to make a good compromise with Russell. I presume no judgment was rendered in the Supreme Court in the case, as the court refused to try cases brought up from the insurrectionary States. Lyon is, I presume, amply solvent for the amount of your claim, as the land is worth the money," &c. (40–41.)

It is thus seen that Richard, as owner, was negotiating with Lyons, the debtor, a compromise, by which these notes would be extinguished, and this not only with the assent of the pretended assignee of the notes, but using him as the agent for that purpose.

The whole correspondence fully bears out the sworn evidence of Richard: "I intended with the proceeds of one of Lyons' notes to pay it off, if the judgment was decided against me, but I had no intention of pledging or assigning the notes or either of them. On the contrary, I wrote him repeatedly I had the notes in New York for sale."

"In one or it may be two of my letters, I speak of sending a Lyons' note, but this was not in any view of pledging it to him as indemnity, but in view of an anticipated compromise of the Russell claim. In one of the letters in which I speak of sending the note I say, that I am willing to make a liberal arrangement with Lyons. Yerger never claimed the possession of said notes or either of them, or any right or interest in them, at any time or on any account." (247–248.)

The question then is, assuming for the argument that H. H. and Mary E. occupy the same position as Richard, does a promise by the holder of a promissory note, that he will indemnify a surety or pay a debtor out of the proceeds of such note, create such an assignment in equity, as will enable the promisee to enforce a lien against those proceeds?

Among the earliest English cases we find that of Bradley. (Ridgway's Cases, 194.) This was a bill by A against B, and one of his debtors, praying that the court would stay the money in the debtor's hands, and not suffer it to be paid to B, for fear of his misapplying it, B having promised to pay the complainant's demand out of such specific debt. Lord Hardwicke refused to hear any argument on the question. He dismissed the bill, saying: "If a debtor promises to pay his creditor out of the money to be recovered in a certain suit, and on the faith of this promise the creditor forbears to sue him, this creates no specific lien on the money recovered."

In Ex parte Haywood, Rose's Cases, 355:

A. consigned a cargo to B., with directions to pay a certain sum out of the proceeds to C., and wrote C. to that effect. Lord Ellenborough held, that here there was no lien, which in its legal sense "*meant a right to possess or retain.*"

In Rogers v. *Hossack*, 18 Wend., 319:

G. executed an assignment to W. & G., for the purpose of paying certain creditors named, on condition of their signing a release, which was done. This contained a covenant by G. that he would pay to the creditors what was due to them out of certain claims against the French Government. The court said: "Here is no assignment, no mortgage or pledge, or any other specific appropriation of the French funds, but a mere covenant to pay them over on their being obtained by the covenantor. That such an agreement does not create any lien, either at law or in

equity, several point-blank cases were cited in the argument."

In *Hoyt* v. *Story*, (3 *Barb., S. C.*, 265,) the above opinion is quoted, with the remark: "This decision of the court of errors is in strict conformity to the current of authorities, and does not introduce any new principle, nor interfere with the settled law in the slightest degree, as seems to be supposed by the chancellor in *Hawley* v. *Ross*, (7 *Paige*, 103,) and in *Richardson* v. *Rush*, (*ib.*, 243.)

The court reviews the case of *Burn* v. *Cavelho*, (4 *Mylne & C.*, 690,) *Malcolm* v. *Scott*, (3 *Hare*, 39,) *Watson* v. *Duke of Wellington*, (1 *Russ. & Mylne*,) and say: "In all these cases it will be perceived that there is something more than a *mere agreement to pay out of a particular fund.* There is some appropriation of the fund, either by giving an order upon it or by transferring it in such a manner that the holder would be authorized to pay it to the creditor directly, without the further intervention of the debtor. This I understand to be the true distinction between a mere contract to pay out of certain funds, and an appropriation of the fund, which a court of equity will uphold as an equitable assignment."

In Brooks v. *Hatch*, 6 *Leigh*, 543:

President Tucker held, that "where the drawer retains a power over the fund, when the transaction shows he had no design to *part absolutely with that power*, it is not an equitable assignment, however valuable the consideration."

In *Little* v. *Skinner*, 23 *Vt.*, 536, Redfield, J.: "As a general rule, an assignment of a thing by way of pledge is wholly inoperative without delivery; and we do not see why this will not apply to *choses in action*, as well as to things in possession. *We know of no case where a mere agreement to assign a chose in action, without even a symbolical delivery, has been held valid between the parties even.*

"In the case of a note or bond, the delivery of the contract is sufficient. So, too, where the assignment of an account

has been made, it has been held sufficient to deliver the bill. And, where the assignment is in writing, the delivery of the writing would very likely be sufficient. But we recollect in no case where the mere agreement to assign has been held to be an assignment in the present tense."

In *Christmas* v. *Griswold*, 8 *Ohio*, N. S., 563, "Christmas agrees to pay Tassett out of the first money he may be entitled to out of his share of the profits from the sale of the lands purchased by Tassett & Christmas of Branton's heirs, the sum of $7,000."

The court cites the following, as the rule laid down in Hare & Wallace's Notes to Leading Cases in Equity, vol. 2, part 2, p. 233:

"It is necessary, moreover, in order to constitute an assignment, either in law or in equity, that there should be such an actual or constructive appropriation of the subject-matter assigned, as to confer a complete and present right on the assignee, even when the circumstances do not admit of its immediate exercise. A covenant on the part of a debtor, to apply a particular fund in payment of the debt as soon as he receives it, will not operate as an assignment, for it does not give the covenantee a right to the funds, save through the covenantor, and looks to a future act on his part as the means of rendering it effectual."

And the court say: "This rule seems to be well sustained and settled by the cases cited in its support."

Ford v. *Garner*, 15 *Ind.*, 301:

The plaintiff owed a certain debt, for which defendants were liable as her indorsers. She had money due her by an insurance company, and she agreed to apply that money, when received, to the payment of the debt. In consideration whereof, the defendants agreed to effect, for her benefit, an insurance on the life of W. H. G., or pay her $2,000.

On the action to enforce this agreement to insure or pay $2,000, the court held the agreement to be without consideration, as they say, "The promise to apply the money to the payment of the notes not only did not give the de-

fendants any right to or control over the money, but it gave them no right of action against her in addition to what she originally had."

"The promise to pay the debt out of the fund named conferred no benefit upon the defendants, as it did not operate as an assignment to them of the fund, or give them the control over it."

Connolly v. *Harrison & Co.*, 16 *La. Ann.*, 4:

The court announced the decision to be, "that the mere promise of a debtor to pay his creditor out of a certain fund when collected, does not operate a transfer of the fund to the creditor, and vest in him a right of action for its recovery.

The assignment of a chose in action, when it is effectual, is enforced at law as well as in equity. (Mandeville *v.* Welch, 3 *Wheat.*, 277.) And it is not deemed to make any difference whether the assignmeut be good at law or in equity.

In the case last cited the court say, that "a deposit of a note, not negotiable, as security for a debt, will entitle the creditor, after notice to the maker, to enforce in equity his lien against the depositor; and such was the case of *Ex parte Byas*, (1 *Atk.*, 148.")

This case also decides, that drafts, drawn for a part of the sum due to the drawer and not accepted, do not operate as an equitable assignment of such part.

In Tiernan v. *Jackson*, 5 *Pet.*, 580:

A cargo of tobacco was shipped by Fletcher to Tiernan & Sons. F., being indebted to Jackson, gave him a draft on T. & Sons, and executed to him a written assignment "of so much of the proceeds of the sale of tobacco alluded to in the within invoice as will amount to $2,400," the sum for which the draft was drawn.

The court say: "Until the parties receiving the consignment or remittance had done some act recognizing the appropriation of it to the particular purposes specified, and

the persons claiming had signified their acceptance of it, so as to create a priority between them, *the property and proceeds remained at the risk and on the account of the remitter.*" (601.)

Rogers v. *Lindsay*, 13 *How.*:

Lindsay, being indebted to R., gave his promissory note, with indorsers, in compromise of this indebtedness, and received from R. a written direction to the bank "to hold subject to L.'s order" certain debts which R. had deposited with the bank.

Passing upon the effect of this, the court say that, "looking to the instrument, we are satisfied that, upon a fair construction, it imports an authority to Lindsay to control the settlement and collection of these several demands; but not necessarily a transfer of the title to, or interest in, them." (444.)

See *Hinkle* v. *Waurer*, 17 *How.*, 353.
Spain v. *Hamilton*, 1 *Wall.*, 604.
Kendall v. *United States*, 7 *Wall.*, 113.

We have cited all the cases we have found decided by this court having relation to the question, and they seem to recognize the principles asserted by the decisions referred to.

Third. If, as between the parties, there was an equitable assignment, yet the transfer to H. H. C., in consideration of which he had discharged Richard from [illegible] conferred upon him a superior title to t[illegible] plainants. The weight of the evidence is *bona fide* of the transfer.

Fourth. But assume that this transfer was not *bona fide*. No attempt is made to invalidate the transaction between H. H. and Payne, Huntington & Co. The note was pleged to them for supplies to carry on his plantation. This note was assigned by H. H. to Mary E. in consideration of her undertaking to pay P., H. & Co., the debt due to them. It being admitted that P., H. & Co. had a good title to the note to the extent of their indebtedness, there is no

fendants any right to or control over the money, but it gave them no right of action against her in addition to what she originally had."

"The promise to pay the debt out of the fund named conferred no benefit upon the defendants, as it did not operate as an assignment to them of the fund, or give them the control over it."

Connolly v. *Harrison & Co.*, 16 *La. Ann.*, 4:

The court announced the decision to be, "that the mere promise of a debtor to pay his creditor out of a certain fund when collected, does not operate a transfer of the fund to the creditor, and vest in him a right of action for its recovery.

The assignment of a chose in action, when it is effectual, is enforced at law as well as in equity. (Mandeville *v.* Welch, 3 *Wheat.*, 277.) And it is not deemed to make any difference whether the assignment be good at law or in equity.

In the case last cited the court say, that "a deposit of a note, not negotiable, as security for a debt, will entitle the creditor, after notice to the maker, to enforce in equity his lien against the depositor; and such was the case of *Ex parte Byas*, (1 *Atk.*, 148.")

This case also decides, that drafts, drawn for a part of the sum due to the drawer and not accepted, do not operate as an equitable assignment of such part.

In Tiernan v. *Jackson*, 5 *Pet.*, 580:

A cargo of tobacco was shipped by Fletcher to Tiernan & Sons. F., being indebted to Jackson, gave him a draft on T. & Sons, and executed to him a written assignment "of so much of the proceeds of the sale of tobacco alluded to in the within invoice as will amount to $2,400," the sum for which the draft was drawn.

The court say: "Until the parties receiving the consignment or remittance had done some act recognizing the appropriation of it to the particular purposes specified, and

the persons claiming had signified their acceptance of it, so as to create a priority between them, *the property and proceeds remained at the risk and on the account of the remitter.*" (601.)

Rogers v. *Lindsay*, 13 *How.*:

Lindsay, being indebted to R., gave his promissory note, with indorsers, in compromise of this indebtedness, and received from R. a written direction to the bank "to hold subject to L.'s order" certain debts which R. had deposited with the bank.

Passing upon the effect of this, the court say that, "looking to the instrument, we are satisfied that, upon a fair construction, it imports an authority to Lindsay to control the settlement and collection of these several demands; but not necessarily a transfer of the title to, or interest in, them." (444.)

See *Hinkle* v. *Waurer*, 17 *How.*, 353.
Spain v. *Hamilton*, 1 *Wall.*, 604.
Kendall v. *United States*, 7 *Wall.*, 113.

We have cited all the cases we have found decided by this court having relation to the question, and they seem to recognize the principles asserted by the decisions referred to.

Third. If, as between the parties, there was an equitable assignment, yet the transfer to H. H. C., in consideration of which he had discharged Richard from a large liability, conferred upon him a superior title to that of the complainants. The weight of the evidence is in ~~favor~~ of the *bona fide* of the transfer.

Fourth. But assume that this transfer was not *bona fide*. No attempt is made to invalidate the transaction between H. H. and Payne, Huntington & Co. The note was pleged to them for supplies to carry on his plantation. This note was assigned by H. H. to Mary E. in consideration of her undertaking to pay P., H. & Co., the debt due to them. It being admitted that P., H. & Co. had a good title to the note to the extent of their indebtedness, there is no

view of the case that can deprive Mrs. M. E. of the right of subrogation, when she paid the debt of P., H. & Co., and took up the note.

The art. 2157, Civil Code of Louisiana, provides that "subrogation takes place of right for the benefit of him who, being himself a creditor, pays another creditor, whose claim is preferable to his by reason of his privileges and mortgages."

This is the rule universally recognized in our jurisprudence. (See Notes of Hare & Wall. to Aldrich *vs.* Cooper, Leading Cases in 2 Equity, 230.)

That the debt was paid to P., H. & Co. with the funds of Mary E. is established by the depositions of Payne, (287,) Hahn, (295,) Richard Christmas, (296,) Tilden, (299,) Brannin, (300,) and Bodley, (302.)

This payment of a *bona fide* debt to Payne, Huntington & Co. by Mrs. Christmas is so clearly established, that it is a matter of surprise it should have been ignored in the decree.

Assuming all that the complainants assert, as to their equity, to be true, they have no cause to object to the payment to Mrs. Christmas of the sum for which P., H. & Co. held the note in pledge; and on this ground alone the decree must be reversed.

P. PHILLIPS,
Attorney for ~~Defendant~~ in Error.

In the Supreme Court of the United States.

WILEY LYON, et al.

VS.

JOHN W. RUSSELL, et al.

Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

BRIEF FOR APPELLEES.

Printed at the Office of the Kentucky Freemason.

In the Supreme Court of the United States.

WILEY LYON, ET AL.	Appeal from the Circuit Court of the United States for the Southern District of Mississippi.
vs.	
JOHN W. RUSSELL, ET. AL.	

STATEMENT OF THE CASF.

This was a proceeding in the court below by the appellees, by bill in equity, to subject a debt due by Wiley Lyon, one of the appellants, to Richard Christmas, another of the appellants, to the payment of a judgment of the appellees, recovered in that court against said Richard Christmas, on the ground that the debt due from Lyon had been assigned as a pledge to indemnify W. P. Anderson and William Yerger as the sureties of Christmas on a writ of error bond, given by them on the suing out of a writ of error to the judgment, to this court, in which the judgment was affirmed at the December term, 1866. The bill was filed by the plaintiffs in the judgment, and their representatives, citizens of Kentucky, against Christmas, Lyon, and the sureties of Christmas, and against certain parties claiming the debt due from Lyon, by assignment from Christmas, and who were prosecuting suits against Lyon for the same in the court below.

On the 26th day of May, 1860, John W. Russell, for the use of himself and Jacob Swigert, Philip Swigert, Edward H. Watson, and Thomas N. Lindsey in his own right and as administrator of Churchill Samuel, recovered a judgment against Richard Christmas in the circuit court

of the United States for the Southern District of Mississippi for the sum of $5,634 19 debt, and $6,521 35 damages—together with costs. From this judgment a writ of error was sued out and bond tendered at the time for supersedeas, executed by Christmas, and W. P. Anderson and William Yerger as sureties. The case in this court is numbered 239, and after the war was finally decided in 1866. The judgment below was affirmed. The judgment and the writ of error bond are shown in a copy of the original record filed in the supreme court; which copy, owing to the loss of the files and records of the circuit court during the war, was read in evidence in the present cause, in the circuit court

To induce Anderson and Yerger to become his sureties, Christmas promised to furnish indemnity to them, and did deliver to them his draft on Martin, Cobb & Co., New Orleans, for $13,000, with a letter of credit from that house agreeing to accept to the amount of $15,000. This appears from Yerger's receipt to Christmas, in the record as Exhibit No. 2, to the answer of Richard Christmas, from which it appears that the security was to be renewed if not collected, or if paid, the money to be held by Yerger as security. This draft and letter of credit were surrendered or redelivered to Christmas. The evidence of Yerger and of Thomas Y. Christmas shows that the surrender was to answer some purpose of Christmas in settlement with them, or at all events, not an abandonment of the right to indemnity, but with the understanding that it was to be replaced. (See Yerger's deposition.)

Richard Christmas sold to Lyon in 1859 a tract of land in Bolivar county, incumbered by mortgage to Martin, Cobb & Co. Lyon paid $30,000 cash, and gave three notes for the balance of purchase money, and afterwards paid $12,000 on one of these notes. The notes are part of the

deposition of Lyon. They were secured by a mortgage on the land purchased, each for $16,666, bearing 8 per cent. interest, and matured in 1859, 1860, and 1861.

Yerger's deposition states that his decided impression is, that at the surrender of the draft Christmas indicated this debt of Lyon as the means of providing new indemnity. The matter stood thus until the war closed. Christmas had during the war gone to Texas, and from thence, at its close, to Matamoras, and in 1865 went to Havanna, and thence to Europe, passing New York on his route. On reaching Liverpool he wrote a letter to Yerger, which is Exhibit No. 1 to Yerger's answer. The letter bears date Oct. 23, 1865, and contains the following passages.

"I feel great uneasiness about your liability on the bond in suit of Russell against me. I have ever held the Lyon note as sacred for the payment of this debt, and have it now in New York endeavoring to sell it with the mortgage to pay this debt. I expect to hear from it daily, if not sold I will send it to you as soon as I return. * * * I left my son Harry in Texas; will you sign in his name to an application for pardon? * * * If this is not done some action may be taken on his lands as abandoned property. Look to this matter, and protect his interest. * * * I hope to see my son in Louisville."

On the 14th of February, 1866, he writes, stating he had countermanded the sale of the Lyon note, and saying he would make a liberal arrangement with him, and adds, "I could not safely send you Lyon's note by mail, as it is payable to me or bearer; hence, if lost, might put me to much trouble. * * Have you examined the situation of my son's land on the river? If in possession of the Freedman's Bureau write him at Louisville." (Exhibit No. 2 to Yerger's answer.)

On the 20th of February, 1866, he wrote again to Yerger, stating that he had written on the 17th, proposing that if Lyon would take up the Russell debt he would al-

low it as a credit, dollar for dollar, on the note; but reflecting that the judgment *might not* be confirmed, and that the note was well secured, he requsets that no further action be had until he can be better informed, suggesting that the rents of the land subject to the mortgage would pay the amount for which Yerger was surety; and then adds: "I will hold this note—$16,666 60, and many years interest at 8 per cent—always subject to this debt, provided the judgment is confirmed, until which time let the matter rest where it is." "When a compromise is made it must be through you as surety." "I am sorry you told Lyon of our understanding, as he will be apt to let Russell know, and prevent an advantageous compromise," &c. (Exhibit No. 3 to Yerger's answer.)

On the 21st of February, 1866, he wrote again from Liverpool, saying, "I wrote you on the 17th and 20th," suggesting that he had written to Burwell to compromise the Russell debt. "You may rest assured I will protect you with the Lyon note. * * This fact should not be known, to enable me to make a good compromise. My son is now in Mississippi, and in possession of his property," &c. (Exhibit No. 4 to Yerger's answer.)

On the 12th of May he writes from Louisville, Ky., stating that he found that Mr. Brannin, the friend in whose hands he had placed the Lyon note, had betrayed him, and had caused the notes to be attached for his debts; thereby requiring him to transfer $6,000 of their amount; and that he had transferred the balance to his son, H. H. Christmas, for a "trust debt," for property given by Hill in his lifetime. "In this I hope I have not lost sight of my purpose to protect you," &c. (Exhibit No. 5 to Yerger's answer.)

The attachment proceeding was at the suit of Martin, Cobb & Co., in Kentucky. The facts in the record show

that the attachment suit was settled, and Christmas, in May, 1866, in Indiana, made an assignment by notarial act of the "balance" to H. H. Christmas.

It will be observed that this transfer was not in the nature of absolute payment on the pretended "trust debt," but the amount was to be credited on the trust account *when* collected. (See Exhibit No. 17, R. Christmas' answer.)

The arrangement was to pay the attaching creditors about $10,000 out of the debt due from Lyon, and H. H. Christmas took the notes to collect and pay over that sum. (See deposition of Lyon.)

Having thus placed the notes out of his hands, and clothed his son with the title, the son, H. H. Christmas, acting with Mr. Burwell, effected a settlement with Lyon, by which the attaching creditors of Richard Christmas were secured for the amount of their debts, and H. H. Christmas received a sum of money and Lyon's two notes, payable to himself, for $8,339 90 each, secured by mortgage on the land as before. (See Lyon's deposition as to the settlement.) One of these notes was afterwards pledged to Payne, Huntington & Co., New Orleans, for certain advances to H. H. Christmas. H. H. Christmas, in order to procure the payment of these advances, and to relieve the note, transferred it to his step-mother, then in Europe, in consideration that she would pay what was due to P., H. & Co., being about half the amount of the note; and it appears from Christmas' (the father) statement, that he sold lands belonging to his wife, under general power of attorney which he held, to raise the money to make the payment. Suits were brought on these notes against Lyon in the circuit court of the United States, both on the notes and on the mortgage to secure them, and were pending in the names of H. H. Christmas and Mary E.

Christmas, wife of Richard Christmas, against Wiley Lyon, when the bill in this case was filed to enjoin them from collecting the money due on the notes, and to require Lyon to pay the same to the use of the complainants. The bill, and an amended bill filed after the answers came in developing the facts connected with the first indemnity given by Christmas to his sureties, contain substantially the narrative just given.

It is charged in the bill that the transfer of 18 6, both that to son and wife of Richard Christmas, was colorable and fraudulent. The facts show that Christmas was insolvent; that he was anxious that the existence of the notes, as his property, should not be known (see his letters), and that especially that the complainants should not have knowledge of his resources. The haste and sacrifice attending the settlement with Lyon; the ceremonious manner of transferring the notes to the son in Indiana, the parties being at Louisville, and the actual gift of three or four thousand dollars to the step-mother by the son, are the pregnant facts on which this charge rests.

Process was served on the Christmas family, by serving *subpœna* and injuction on their attorney in the cases against Lyon, as is the practice in such cases.

It is barely necessary to mention that there was a demurrer to the bill by Freeman, and a motion to dissolve the injunction granted in the case, both of which were overruled. The points made by the demurrer arise on the case as made by the answers and proof.

After the demurrer was overruled the answers of Richard Christmas and his son were filed. The latter was in California when the proceeding commenced, and his answer was wholly made out in the city of Jackson, and forwarded to him, and returned without alteration. It was made out by the assistance of Richard Christmas. (See

Freeman's deposition.) Mrs Christmas did not answer, and by consent she was considered as adopting the answers of Richard Christmas and H. H. Christmas. The paper filed as her answer was the production of her attorney, and without communication with her.

The answers do not deny the letters of Christmas to Yerger, but object to the construction placed on them. They admit the original undertaking to furnish indemnity, and that it was furnished at first as stated, but deny that there was any specific pledge of anything, or promise to replace it when it was surrendered They set up the claim of H. H. Christmas to the notes of Lyon, as founded on a transfer to him by his father in August, 1862, for debt due for the use of property and money of the son by his father acting as his trustee, and that the transfer in 1866 was but confirmation of the title thus acquired. The explanation given is, that in August, 1862, on the eve of their departure for Texas, there was a partial settlement, and the notes delivered to the son, and a written transfer made and signed by Richard Christmas, which was lost in Texas; that the notes were forwarded to Richard at Matamoras by his son for safe keeping, which accounts for his possession of them after the transfer. To account for the acts of ownership over them, by leaving them to be sold in New York, by pledging them to Yerger and Anderson, &c., &c., Richard states that he heard at Matamoras, before leaving for Europe in the spring of 1865, that his son had died, and that though he learned afterwards in London that the report of his death was unfounded, he did not apprise Yerger of the fact, because he hoped to prevail on his son to carry out his pledges; and he did not apprise Yerger of his reported death because he feared that fact would lead to the seizure of his property. These reasons are in part taken from the deposition of Richard, which is an amplifi-

cation of his answer. The reason the claim of the attaching creditors was allowed to prevail in Kentucky, notwithstanding the title of the son was, that they feared that the attachment would take precedence of that title.

There are several witnesses whose depositions were taken in Kentucky by Richard Christmas; one who swears he *saw Richard write the transfer* of the Lyon note to his son in 1862. There is a letter of Christmas produced with the deposition of Freeman, in which he informs Freeman that he has "dug up" a receipt dated August, 1862, signed by his son. This receipt is proved in a strange manner: Christmas at Louisville with the receipt, carried it to St. Louis, and exhibited it to one Young, and requested Young to transmit it by mail to Freeman after taking a copy. This precaution was taken against possible miscarriage by mail. The deposition of Young is then taken to prove that the original was in the hand-writing of H. H. Christmas, and that he did transmit it as requested. Freeman's deposition was then taken to prove that the original never reached him, so as to admit the copy as evidence.

This is the body of the case.

BRIEF AND ARGUMENT.

The first question affecting the merits of the case is that which arises on the right or title which Anderson and Yerger acquired to the note of Lyon. They had become the sureties of Richard Christmas on his writ of error bond, and on his promise to provide indemnity. They did not incur the liability on the mere obligation, which is implied by law, but stipulated for specific indemnity; and it is very obvious that Christmas, throughout all the subsequent transactions and correspondence, regarded himself as bound not merely by the ordinary obligation of the principal to save his sureties harmless, but to provide

specific indemnity of some kind, and this fact furnishes the interpretation of his letters. The first security given, the acceptance of Martin, Cobb & Co. was surrendered at his request; but it is evident there was, at the time of its surrender, a promise to replace it by other security. Mr. Yerger's recollection as to what the substituted security was to be, is, that it was to come from the debt due from Lyon; and this impression of his is confirmed by the peculiar language of the letter of the 23rd of October, "I have ever held the Lyon note sacred," &c., used in direct connection with the matter of indemnity to his sureties. This could only be employed by one who supposed that Yerger knew that the debt of Lyon had been pledged; and it could only be applied to something which has at some former time been set apart, by the understanding of both, for the purpose of supplying the place of the surrendered security, and to fulfill the obligation to keep the sureties indemnified. He had always held it sacred for the payment of the debt. These terms could only have sprung from a consciousness that at some former time the note had been devoted to that particular object, and plainly import that a pledge formerly made, and of peculiar obligation as to the identical debt of Lyon had been faithfully kept, and that the subject of this pledge had not been and would not be diverted from that object.

Again: in his letter of the 20th of February, 1866, Christmas, in order to quiet all apprehension in the breast of Yerger, repeats the pledge in words which amount to a declaration of a trust. The note of Lyon is in the hands of a friend in New York; Christmas is in Europe, and Yerger is in Mississippi. If the parties had been together there would have been a delivery of the note to Yerger, as it is stated in the letter of the 14th of February, 1866, that it is not sent because being payable to bearer its loss

might occasion trouble. If the parties had been so situated as to admit of passing the note by delivery, and it had not been so passed, it might be said it was not the intention to pass the title, or to create any title in the sureties; but the circumstances in which the note and the parties were placed, coupled with the reason given by Christmas why the note was not delivered, show to a moral certainty that Christmas meant that the non-delivery was in no way to affect the assignment which he made. The note and parties being thus situated, he adopts the only method which occurred to him of making the pledge and assignment certain and specific. He states the amount of the note, the rate of interest, the manner in which it was secured, and the place where it was deposited, and then he declares in writing, "I will always hold the note subject to the payment of the judgment when the same shall be confirmed." What was the intention of Christmas in sending this formal declaration across the water? The relations of the parties show that he was under peculiar obligation to keep them indemnified; having withdrawn the indemnity first given he recognizes his obligation to supply its place, and makes the declaration contained in the letter in order to get a distinct view of the transaction, and to estimate it exactly, we will, without amplification, put the parts together:

"I, Richard Christmas, having induced William Yerger and Warren P. Anderson to become my sureties for a large sum on a writ of error bond, by my promise to keep them indemnified by some specific indemnity, and having withdrawn the indemnity heretofore given, hereby declare that I have always held a note of Wiley Lyon, which will be particularly described hereafter, as 'sacred' for the purpose of supplying this indemnity; the note aforesaid being in the hands of a friend in the city New York is not forwarded

to said Yerger, because being payable to bearer it may be lost on transmission; and being myself in Europe, the note in New York, and said Yerger in the State of Mississippi, I further declare and make known that I will always hold that note, being for $16,666 60, bearing 8 per cent. interest, and secured by mortgage on lands, subject to the payment of the judgment for which they, the said Yerger and Anderson, are bound as my sureties should the same be confirmed; and I will send them the note when I reach America."

It would not be doubted for a moment that the delivery of the note to Yerger with this declaration would have conferred the legal title. The excuse given for not putting it in Yerger's hands is an admission that the purpose was to confer upon him all the title which could be derived from the *contingent* liability of the sureties, and its transfer as indemnity for a contingent liability. It is, in other words, an admission by Christmas, that in the true intent and spirit of his assignment possession of the note was Yerger's right.

On this state of the case the question arises, did the sureties acquire such title to or right in the note that it could not be withdrawn by Christmas? In order to put the question in its true light, let it be supposed that Christmas had, from his place in Europe, written these letters to *induce* Yerger and Anderson to become his sureties in the first instance, and giving the same reason why the note was not transmitted with the letters, and on the faith of these letters they had signed his bond, is it conceivable that a court of equity would hold the declarations, pledging the note ineffectual to create any interest in the sureties? Is the case varied by the fact that having obtained their signatures on a promise to keep them indemnified by specific security, he made these declarations in order to

fulfill his promise? It is plain the consideration for the pledge was sufficient, and the intention plain to devote the note to this object to make it specific indemnity for the protection of the sureties. Clearly Christmas did not aim to repeat merely the promise which the law implies, that he would save his sureties harmless. That promise they had before. His object was to comply with his promise.

The equitable assignment, as recognized and upheld by the court of chancery, is founded in the idea that the forms of transfer required in courts of law have not been followed, or that the subject of the transfer does not admit of assignment so as to vest a legal title. That court, looking at the intentions of the parties by the light of the objects they have in view, and the consideration moving them to act, is content with evidence which shows a plain purpose for the benefit of a particular party, and carries out the purpose to devote a specific thing for a specific purpose, without regard to the fact whether or not the usual steps have been taken to transfer the legal title.

The subject of equitable assignments, as it stands on the authority of adjudicated cases, is very intelligently discussed in the notes to the case of Row vs. Dawson, 1 Vez., 331, in Leading Cases in Equity, 3d American edition, vol. 3, pp. 357–8. The cases which serve fully to present the doctrine are Raymond vs. Squire, 11 Johns., 47; People vs. Poiga, 19 Wendell, 73; 1 Strobhart (N. C. Equity), 47; 6 Leigh, V., 534; Payton vs. Hallet, 1 Carnes Cases; Knapp vs. Alvord, 10 Paige, 205. ××

From these the following propositions may be extracted: 1. Anything which shows an intention to assign on the one hand, and from which an assent to receive on the other may be inferred, will operate as an assignment if sustained by a sufficient consideration. 2. No writing or particular form of words is necessary if the consideration be proved, and the meaning of the parties apparent. 3. The

obligation to indemnify sureties is a continuing obligation, and a sufficient consideration for a transfer or conveyance.

The object of the parties here is apparent. It was to place Yerger and Anderson in the position of sureties with specific indemnity. Christmas being under an express obligation to do so, and having obtained the surrender of the first indemnity on an understanding that he was to replace it by something equivalent, Yerger accepted it, and notified Lyon of the understanding with Christmas. It was a power of attorney coupled with an interest, a designation of the fund as one to be used by the surety with power to use it, and notice to the debtor of that power and its object.

It will doubtless be urged upon the court, that the subsequent correspondence shows that Christmas asserted control, and Yerger yielded to it, in the settlement with Lyon. It is to be observed, however, that this control extended to the matter of compromising the debt on which the sureties were bound; and the request to *suspend* action is accompanied by a solemn pledge of the note—a distinct appropriation—so as to leave it *subject* to the satisfaction of it at Yerger's instance and for his benefit. The repetition of the pledge was manifestly made lest Yerger might suppose that he intended to recede from it.

The control which he asserted, and to which Yerger was willing to yield, was not inconsistent with the right of the sureties, but strictly compatible with the relations existing between the principal and the sureties holding the note as indemnity for a contingent liability. The judgment had not been affirmed, and the liability of the sureties remained unfixed, and in this attitude of the parties Christmas was *interested* in making the most of the note of Lyon. His directions related to the main object of the pledge, that is to say, the relief of the sureties from

liability for the debt—the judgment. Yerger could but recognize the fact that Christmas would be entitled to all that was saved of the Lyon debt. It was not certain that the judgment would be affirmed; and in this condition of the affair Christmas had a right to some control as to the terms of a compromise. There is nothing, therefore, in this feature of the correspondence, which impairs the effect of the pledge or alters its character.

There can be no doubt as to the effect of this pledge as between the parties. A court of chancery would enforce it against Christmas, and against any party occupying the position of H. H. Christmas, who took the note long after it was due, and for a pre-existing debt and not as actual payment; for it will be observed that by the terms of the transfer in 1863, (Exhibit 17 to answer of R. Christmas), it was to be applied as credit on account *when collected*, so that a failure to collect would have left the parties in *statu quo;* in other words, aside from the question of notice, H. H. Christmas took the note not as an innocent purchaser for value; and taking it after maturity he took it subject to the equities of other parties. If he had notice the equitable claim of Anderson and Yerger would affect the note in his hands; and taking it as he did, it is the same as if he had notice. A party taking securities after maturity take the title of the vendor subject to all equities by which it is affected. (Texas vs. White, 7 Wallace, p. 735; Goodman vs. Simonds, 20 How., 336; 3 McLean Ct. Ct., 371.)

The circumstances under which the transfer to the son and to Mrs. Christmas took place tend strongly to show that it was a contrivance by Christmas to overreach the claims of others, and to secure the Lyon debt for the benefit of his family. The continued control over it exercised by the father, and the gift of a large portion of it

to a *step-mother* by the son, are circumstances which favor the suspicion that he did not regard himself as the owner. This step-mother was, indeed, not aware of his bounty, or that she constituted a rare exception to a very general rule. This whole matter was conducted by Richard Christmas, who had, *as her agent, full notice;* and taken with his explanation by answer and deposition makes a curious piece of work, and Mrs. Christmas was an unconscious agent in it.

The weakness of the claim set up under the transfer of 1866 was apparent; and there was an attempt to set up a transfer of earlier date prior to the transfer to Yerger and Anderson, to-wit: of August, 1862. One would hardly believe that when Christmas wrote the letter of October 23d, 186[illegible], in which he said, "I have ever held the Lyon note sacred for the payment of this debt," he was *conscious* of having transferred it absolutely to another in 1862. The circumstances attending that transfer are in themselves strange, and the fate of it is still stranger. It is not easy to see why notes which pass by delivery should, when both the note and parties are together, be transferred by a separate writing; or why, if better evidence of title than bare possession was deemed essential, the transfer was not by indorsement on the note, so that evidence of title would always accompany it? A receipt under the circumstances might well be given; but both father and son say there was a *written transfer*, which the son took and afterwards lost. Both these persons seem to know the quality of a note payable to bearer. Richard knows that delivery or possession carries title, as we see in his letters. Harry, either "in *court* or camp," has, it seems, learned that a purchase of such a note in "market overt" without writing gives a title. Richard Christmas knew that the notes had no evidence of transfer indorsed on them when they were

in New York, and that his possession and acts of ownership strongly negatived the idea of such transfer; and what would not occur to men generally as necessary in passing notes payable to bearer becomes so in the suit.

If the transfer ever took place, we are bound by all the probabilities of this case to suppose that it was a mere provisional arrangement, which the father might treat as it pleased him. He, the father, is found in possession of the notes after this transfer, dealing with them as his own, and he continued so to deal with them down to 1866, when he apprises Yerger by letter of the transfer then recently made, *without adverting to any previous transfer*. The explanation which Christmas attempts to make of his possession and acts of ownership shows him to be a man capable of double-dealing, and causes us to distrust everything he says or contrives to have said. The whole defense made in the cause is his mechanism, and shows him in a most unfavorable light. In order to account for dealing with notes alleged to have been transferred to his son, as his own, he states that he learned at Matamoras that his son had died, and that he remained under the belief of his death until some time in 1866. *His letters bear internal evidence* that he had no such belief, for he is writing to a friend and asking that friend to assist his son by looking after his property, and procuring that son a pardon from the Government of the United States. These letters all assume that he is living; and he would have us believe, that with a belief that he was dead he would procure his friend Yerger to impose on the Government by getting a pardon for a dead man, to save property which the knowledge of his death might expose to seizure; that for this reason he did not mention his death, and wrote to his friends assuming that he still lived. This story will not suffice; for after the time when it is admitted he must

have known he was alive, he continued to treat the Lyon note or notes as under his control. When he is pressed by question as to the time and place he received intelligence that his only son still lived, after having mourned him as dead, he is unable to fix the time even to the month. Is there a man who would not have marked the day and the place when such joyful news reached him? Could Christmas have written such letters under such circumstances? He attempts to explain the fact that he continued to encourage Yerger that the note should be turned over for his protection after he knew his son was living, by saying that he hoped to prevail on his son to carry out his intentions. Did he make the effort when he met his son? His son denies having any knowledge of the arrangement. These transparent pretences are not helped out by the story of the receipt, which so strangely lost itself at St. Louis—a loss which appears to have been premeditated.

There are certain facts of the case which admit of no controversy. The notes were payable to Richard Christmas he has always had them in any transaction in which they were employed anterior to May, 1866; he treated them as his own; he himself, in a letter written before this controversy sprung up, says he had always held the Lyon note sacred for one purpose, which is a deliberate admission or declaration that he had never transferred them beyond his control; his son allows them to be seized for his father's debts without interposing a claim, and finally accepted an assignment of the balance in 1866. The question arises, will the court, turning aside from the solid *terra firma* of indisputable facts, proceed to set up a title acquired by the son in 1862, on the insecure foundation of the doubtful evidence in the record in the face of the acts of both father and son in 1866, showing that neither relied on the alleged transfer of 1862?

The court could not revive what the parties most concerned seem to have abandoned. One circumstance is worthy of notice, and it is that Christmas, in his letter of the 12th of May, does not speak of his son's prior right to the notes; and it did not then occur to him to offer that excuse for a plain breach of faith as it appears in one aspect of it, and of double-dealing in another. The most lenient view to be taken of the conduct of Christmas is, that he regarded the debt he owed Russell as one he was not morally bound to pay; and though he felt in honor bound to protect his sureties, he succeeded in persuading himself that they were insolvent, and could not be hurt, and in this belief he undertook to divert the security pledged to them to the use of his family. The man he shows himself to be could easily reconcile this course to his conscience.

We arrive at the result, therefore, that Christmas, under his express promise to provide indemnity to Anderson and Yerger, did declare a trust in their favor of the Lyon debt; that although the words "transfer and assign" were not used, yet words equivalent in force were employed, to-wit, that the note, not susceptible of actual delivery, was *held subject to the payment of the debt for which his sureties were bound*, for their protection. The intention to appropriate the note to this object is plain beyond a doubt; and the language employed being sufficiently expressive of this intention it amounted to an equitable assignment available to the sureties; and being available to them is available, on a well established doctrine, to the creditor.

There is nothing in the point, that it turns out in proof that there were three notes of Lyon's instead of one. One was devoted to the sureties, and was blended with others in subsequent dealings, by which the sureties' right to it was not affected; and it is not for those who thus dealt

with them to say the sureties can not identify the security wrongfully converted with the notes given by Lyon in settlement. What is now claimed is not more than the note pledged, and we trace the note into the settlement and the notes last executed, and show a superior title to what remains due from Lyon.

There was a question of jurisdiction raised by the demurrer, which was, that the plaintiffs in the suits against Lyon were non-residents of the State of Mississippi.

A bill of the character of the one filed in this case, to enjoin proceedings pending in the circuit court, and to prevent a wrongful use of the proceedings, is not regarded as an original suit, and non resident plaintiffs in the proceedings sought to be enjoined, or as to which relief is sought, being in court as parties, may be made such by the bill. (2 Brock (Marshall), 293; 2 Washington, (Circuit Court) 393, and cases collected in 3 Abbott's Nat. Digest, p. 41; Dunlap vs. Stetson, 4 Mass.)

So there remains to be considered the point raised by the demurrer, and which arises indeed on the case as made out, and that, is whether the complainants, being the owners of the judgment against Christmas for the payment of which Anderson and Yerger are bound as sureties on the writ of error bond, can avail themselves of the Lyon debt, or require it to be applied towards the satisfaction of the judgment.

The bill seeks to subrogate the creditor to the rights of the sureties of the debtor who hold the Lyon debt as a pledge for their indemnity. Their right to this relief is founded in the equitable doctrine, that property thus held by the sureties is a trust for the creditor. Story in his Commentaries, volume 1, § 502, states the doctrine thus: "On the other hand, if a surety has a counter-bond or security from the principal, the creditor will be entitled

to the benefit of it, and may in equity reach the security to satisfy his debt." Ib. § 638, citing the leading case, 1 Equity Cases Abridged, 93. Tucker in his Commentaries, p. 492, states the same doctrine fully, citing numerous cases to illustrate it. In Mississippi the whole doctrine, as it stands on the authority cited, has been fully recognized in Ross vs. Wilson, 7 Smedes and Marshall (Mississippi), 753. The creditor has the right to "stand in the shoes of the surety holding securities."

In the present case the security, by the very terms in which it was pledged, was available to the sureties when the judgment was "confirmed." That event had occurred, and the security was about to be lost—the principal debtor being insolvent, and the fund about to be appropriated or wrongfully diverted. The liability of the sureties was fixed, and they had the right to require the application of the debt of Lyon to the payment of the judgment, without waiting to be sued; and manifestly if the security was a trust for the benefit of the complainants, they could make it available.

It is true that in suits *at law*, by sureties on an indemnity, they must show *damages*. Before they can recover the amount of the debt they must have paid it, because they might recover the amount and yet fail to apply it to extinguish the debt. Courts of equity, however, having power to apply securities to the debt, and thus fulfill the obligations of all the parties, and protect the rights of all, do not find it necessary to wait until the surety is actually constrained to pay by legal process. These courts carry out the purpose of the indemnity to complete protection. In Daniel vs. Joyner, 3 Iredell's Equity Rep. 513, Judge Ruffin thus states the distinction: "At law a party who claims under an indemnity must show that he has been damnified; until that he has no right to have the

In Eq. if the creditor applies to be subrogated to the rights of the surety, the fund pledged to indemnify the surety will be directly appropriable to the payment of the debt for which the surety is liable. If the surety has the immediate right to pay the debt and resort to

money, and the law will not trust him with it, as he might fail to apply it. But there is no such impediment to the action of the court of equity, for here the application of the money to its ultimate destination may, under the direction of the court, be immediate, without passing through the hands of the party indemnified." This very lucid exposition of the subject renders it unnecessary to add more, see, however, Tankersly vs. Anderson et al., 4 Dessausure, 44; Graves vs. Graves, 1 Washington, 1.

The creditor's right to subject the security supposes of course that the debt has not been paid, and is not dependent on the fact of actual damage to the surety.

Mrs. Christmas is thrust into the case without her knowledge. Richard Christmas wished to keep the Lyon notes under his control. Not having money or credit, according to his own account he took advantage of a general power of attorney to sell his wife's land, and paid Payne, Huntington & Co. with the money. This was simply a conversion by him with full knowledge of his wife's property, and the matter rests between them. Finding the notes back in the hands of Christmas, our title is not to be affected by a misapplication of the wife's property. She paid a debt of young Christmas, but her pretended agent had full notice that he was getting something which belonged to another. Notice to the agent is notice to the principal.

In conclusion we will add, that of the right and justice of the claim of the sureties to have this debt applied to their relief is above all controversy. The opposing title of the son and wife of Richard Christmas, and the evidence by which it is sought to be upheld, looks like a fabrication. No fair-minded judge could view it in a favorable light. It bears internal evidence of fabrication, and the hand which manipulated the defense was not the "clean

hand" which is held in a "friendly grasp" by a court of equity. Richard Christmas, as he is exhibited in the evidence furnished by himself, is a man capable of concealing his resources from his creditors in order to reduce their demands; capable of imposing on the Government to screen property; capable of violating sacred pledges to the friends who helped him in his time of need for the most sordid of all motives; capable, indeed, of the fabrication which every one must more than suspect in the defense he has here set up. Nothing could so well illustrate the far-reaching, inexorable, remedial justice of the court of chancery as this case, in which, in spite of cunning and contrivances, and through the maze of complications in which cunning and bad faith involved the claims of strict justice, the court reached a result which fills the measure of the obligations of the parties to each other, and satisfies the behests of the law.

W. P. HARRIS, *for Appellees.*

ADDENDA.

The evidence to show Richard Christmas capable of resorting to any shifts to keep from paying the claim of appellees, is very complete in the Kentucky record forming part of this case.

He is convicted there of having sold the steamboat bought of appellees to his captain, who commanded her, to defraud his creditors, as proven by the captain's wife, who overheard the conversation between her husband and himself.

He gave to the agent of appellees the captain's note, with his own and his brother's names thereto, written by his brother; and then, after his brother's death, when sued upon

the note, plead *non est factum* to it—virtually charging his brother with having forged his name.

Caught in all this baseness, he induces friends to go his security in an appeal or writ of error bond, and then unblushingly proposes to one of them to so act with appellees as unjustly to induce them to take less than their claim; and when, by reason of the misfortunes of the war he thinks his securities cannot be made to pay, attempts to use his son and wife as instruments to his base purposes.

The whole case is redolent with fraud and baseness on the part of said Christmas, and has nothing on the part of his son and wife to prevent a court of equity from causing to be used and appropriated to the relief of the sureties the Lyon debt, by subjecting the same to the just claim of appellees against said Richard Christmas.